

**Consideration of preliminary adoption of amendments to 312 IAC 25 governing surface mining and reclamation; Administrative Cause No. 08-067R**

312 IAC 25-1-10.5 "Applicant/Violator system" defined

This definition is added as it is a term used within the federal Office of Surface Mining's Ownership and Control rulemaking. The Division of Reclamation must revise its regulations for consistency as required by letter dated September 30, 2009. The addition of this term is to provide clarity.

312 IAC 25-1-32.5 "Control or controller" defined

This definition is added as it is a term used within the federal Office of Surface Mining's Ownership and Control rulemaking. The Division of Reclamation must revise its regulations for consistency as required by letter dated September 30, 2009. The addition of this term is to provide clarity.

312 IAC 25-1-48 "Excess spoil" defined

This definition is modified for consistency with the federal counterpart and to provide clarity.

312 IAC 25-1-51.5 "Federal office of surface mining applicant violator system office" defined

This definition is added as it is a term used within the U.S. Department of Interior's Office of Surface Mining's Ownership and Control rulemaking. The Division of Reclamation must revise its regulations for consistency as required by letter dated September 30, 2009. The addition of this term is to provide clarity.

312 IAC 25-1-75.1 "Knowing or knowingly" defined

This definition is added as it is a term used within the U.S. Department of Interior's Office of Surface Mining's Ownership and Control rulemaking. The Division of Reclamation must revise its regulations for consistency as required by letter dated September 30, 2009. The addition of this term is to provide clarity.

312 IAC 25-4-18 "Surface mining permit applications; compliance information"

This regulation is modified to incorporate language within the surface coal mining permitting provisions consistent with federal counterpart regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-59 "Underground mining permit applications; compliance information"

This regulation is modified to incorporate language within the underground coal mining permitting provisions consistent with federal counterpart regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-115.1 Post permit issuance information requirements

This regulation is modified to incorporate language consistent with federal counterpart

regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-122.1 Review of director's ownership or control listing or finding

This regulation is modified to incorporate language consistent with federal counterpart regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-122.2 Burden of proof for ownership or control challenges

This regulation is modified to incorporate language consistent with federal counterpart regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-122.3 Written agency decision on challenges to ownership or control

This regulation is modified to incorporate language consistent with federal counterpart regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-127 Permit review; revisions, renewals, and transfer, sale, or assignment of rights granted under permits; permit revisions

This regulation is modified in order to provide consistency and clarity as it related to statutory provisions at IC 14-34-5-8 through 8..6

312 IAC 25-5-7 Period of liability

This regulation is modified to provide a provision currently contained in the federal counterpart regulation.

312 IAC 25-5-16 Performance bond release requirements:

This regulation is modified in order to clarify notice and public input requirements consistent with the statute and the federal counterpart.

312 IAC 25-6-59 Surface mining; revegetation; standards for success for nonprime farmland

This regulation is modified to provide enhanced reforestation alternatives for specific forest reclamation initiatives.

312 IAC 25-6-93 Underground mining; explosives; general requirements

This regulation is modified to clarify the Division of Reclamation policy for blast designs and monitoring while constructing underground mine facilities.

312 IAC 25-6-94 Underground mining; explosives; preblasting survey

This regulation is modified to be consistent with the statutory provision at IC 14-34-12-2 and the federal counterpart regulation.

312 IAC 25-6-95 Underground mining; explosives; publication of blasting schedule

This regulation is modified to provide for a consistent approach between surface and

underground mining operations concerning publication of blasting schedules.

312 IAC 25-7-5 State enforcement; cessation orders

This regulation is modified to incorporate language consistent with federal counterpart regulations as required by letter from the U.S. Department of Interior's Office of Surface Mining dated September 30, 2009.

312 IAC 25-4-23 Surface mining permit applications; identification of other safety and environmental licenses and permit

This regulation is repealed as a result of the U.S. Department of Interior's Office of Surface Mining having previously repealed its counterpart to this regulation.

312 IAC 25-4-64 Underground mining permit applications; legal and financial information; identification of other licenses and permit

This regulation is repealed as a result of the U.S. Department of Interior's Office of Surface Mining having previously repealed its counterpart to this regulation.

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule  
LSA Document #10-**

**DIGEST**

Amends 312 IAC 25 governing surface mining and reclamation.

312 IAC 25-1-10.5; 312 IAC 25-1-32.5; 312 IAC 25-1-48; 312 IAC 25-1-51.5; 312 IAC 25-1-75.1; 312 IAC 25-4-18; 312 IAC 25-4-23; 312 IAC 25-4-59; 312 IAC 25-4-64; 312 IAC 25-4-115.1; 312 IAC 25-4-122.1; 312 IAC 25-4-122.2; 312 IAC 25-4-122.3; 312 IAC 25-4-127; 312 IAC 25-5-7; 312 IAC 25-5-16; 312 IAC 25-6-59; 312 IAC 25-6-93; 312 IAC 25-6-94; 312 IAC 25-6-95; 312 IAC 25-7-5

SECTION 1. 312 IAC 25-1-10.5 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-1-10.5 "Applicant/Violator system" defined**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

**Sec. 10.5. "Applicant violator system" means an automated information system of applicant, permittee, operator, violation and related data maintained by the federal Office of Surface Mining to assist in implementing 312 IAC 25.**

SECTION 2. 312 IAC 25-1-32.5 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-1-32.5 "Control or controller" defined**

**Authority IC 14-34-2-1**

**Affected: IC 14-34**

**Sec. 32.5. "Control or controller", in the context of 312 IAC 25-4-17, 25-4-18, 25-4-58, 25-4-59, 25-4-114, 25-4-115.1, 25-4-122.1, 25-4-122.2, 25-4-122.3, 25-4-133, and 25-7-5, means:**

- (1) A permittee of a surface coal mining operation;**
- (2) An operator of a surface coal mining operation;**
- (3) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.**

SECTION 3. 312 IAC 25-1-48 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 25-1-48 "Excess spoil" defined**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

Sec. 48. "Excess spoil" means ~~spoil in excess of that necessary to backfill and grade affected areas to~~ **material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 312 IAC 25-6-34, 25-6-50, 25-6-98, and 25-6-112 in non-steep slope areas shall not be considered excess spoil.** ~~The term may include box cut spoil where it has been demonstrated, for the duration of the mining operation, that the box cut spoil is not needed to restore the approximate original contour.~~ *(Natural Resources Commission; 312 IAC 25-1-48; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3409, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

SECTION 4. 312 IAC 25-1-51.5 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-1-51.5 "Federal office of surface mining applicant violator system office" defined**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

**Sec. 51.5. "Federal office of surface mining applicant/violator system office" means the U.S. Department of Interior, Office of Surface Mining office that maintains the Applicant/Violator System.**

SECTION 5. 312 IAC 25-1-75.1 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-1-75.1 "Knowing or knowingly" defined**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

**Sec. 75.1 "Knowing or knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.**

SECTION 6. 312 IAC 25-4-18 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 25-4-18 Surface mining permit applications; compliance information**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34; 30 CFR 778.14**

**Sec. 18. (a) Each application shall contain the following information:**

- (1) A statement of whether the applicant, operator, or any subsidiary, affiliate, or persons controlled by or under common control with the applicant or the operator has:**

- (A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or**

(B) forfeited a performance bond or similar security deposited in lieu of bond.

(2) A brief explanation of the facts involved in any such suspension, revocation, or forfeiture referred to in subdivision (1), including the following:

(A) The identification number and date of issuance of the permit, and the date and amount of bond or similar security.

(B) The identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.

(C) The current status of the permit, bond, or similar security involved.

(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(E) The current status of the proceedings required in clause (D).

(3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns and controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

(A) Any identifying numbers for the operation, including the following:

(i) The federal or state permit number and MSHA number.

(ii) The dates of issuance of the violation notice and MSHA number.

(iii) The name of the person to whom the violation notice was issued.

(iv) The name of the issuing regulatory authority, department, or agency.

(B) A brief description of the violation alleged in the notice.

(C) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subdivision to obtain administrative or judicial review of the violation.

(D) The current status of the proceedings and of the violation notice.

(E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After an applicant is notified that the application is approved, ~~but before the director will not issue the permit is issued, until~~ the applicant shall, as applicable, updates, corrects, or indicates that no change has occurred in the information previously submitted under this section. **After completion of this requirement, the director will again request a compliance history report from the Applicant/Violator System to determine if there are any unabated or uncorrected violations which affect permit eligibility under 312 IAC 25-4. The director will request this report no more than five (5) business days before permit issuance.**

(c) The director will rely upon the violation information supplied by the applicant, a report from the Applicant/Violator System, any other available information to review histories of compliance with this article, the Federal Surface Mining Control and Reclamation Act of 1977 or Public Law 95-87, and any other applicable air or water quality laws, for entities identified under subsection (a)(1).

(d) **The director must conduct the review required under 312 IAC 25-4-114(b) before making a permit eligibility determination under part (b) of this subsection.** *(Natural Resources Commission; 312 IAC 25-4-18; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3444, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

SECTION 7. 312 IAC 25-4-59 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 25-4-59 Underground mining permit applications; compliance information**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34; 30 CFR 778.14**

Sec. 59. (a) Each application shall contain the following information:

(1) A statement of whether the applicant, **operator**, any subsidiary, affiliate, or persons controlled by or under common control with the applicant **or the operator** has:

(A) had a federal or state coal mining permit suspended or revoked in the five (5) years preceding the date of submission of the application; or

(B) forfeited a performance bond or similar security deposited in lieu of a bond.

(2) A brief explanation of the facts involved, if any such suspension, revocation, or forfeiture referred to in subdivision (1) has occurred, including the following:

(A) The identification number and date of issuance of the permit, and the date and amount of bond or similar security.

(B) Identification of the authority that suspended or revoked the permit or forfeited the bond, and the stated reasons for the action.

(C) The current status of the permit, bond, or similar security involved.

(D) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

(E) The current status of the proceedings identified in clause (D).

(3) A list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns and controls" in 312 IAC 25-1-94. For each notice of violation issued under 312 IAC 25-7-6 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information as applicable:

(A) Any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department, or agency.

(B) A brief description of the violation alleged in the notice.

(C) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in this subdivision to obtain administrative or judicial review of the violation.

(D) The current status of the proceedings and of the violation notice.

(E) The actions, if any, taken by any person identified in this subdivision to abate the violation.

(b) After the applicant is notified that his or her application is approved, ~~but before the director will not issue the permit is issued, until~~ the applicant, shall as applicable, updates, corrects, or indicates that no change has occurred in the information previously submitted under this section. **After completion of this requirement, the director will again request a compliance history report from the Applicant/Violator System to determine if there are any unabated or uncorrected violations which affect permit eligibility under 312 IAC 25-4-114 and 115. The director will request this report no more than five (5) business days before permit issuance.**

(c) The director will rely upon the violation information supplied by the applicant, a report from the Applicant Violator System, any other available information to review histories of compliance with this article, the Federal Surface Mining Control and Reclamation Act of 1977 or Public Law 95-87, and any other applicable air or water quality laws, for entities identified under subsection (a)(1).

(d) The director must conduct the review required under 312 IAC 25-4-114 before making a permit eligibility determination under part (b) of this subsection. *(Natural Resources Commission; 312 IAC 25-4-59; filed Jun 21, 2001, 2:53 p.m.; 24 IR 3461, eff*



*Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

SECTION 8. 312 IAC 25-4-115.1 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-4-115.1 Post permit issuance information requirements**

**Authority: IC 14-34-2-1**

**Affected: 14-34**

**Sec. 115.1 (1)** Within sixty (60) days of any addition, departure, or change in position of any person identified in 312 IAC 25-4-17 and 312 IAC 25-4-58, the permittee must provide

(A) The information required under 312 IAC 25-4-17(b)(1), (2), and (3) and 312 IAC 25-4-58(a)(3)(A), (B), and (C); and

(B) The date of any departure.

SECTION 9. 312 IAC 25-4-122.1 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-4-122.1 Review of director's ownership or control listing or finding**

**Authority: IC 14-34-2-1**

**Affected: 14-34**

**Sec. 122.1 (a)** Whenever an ownership or control listing or finding is made by the department under 312 IAC 25-4-114, the applicant or a person with an interest that is or may be adversely affected may challenge the listing or finding by submission of a written explanation of the basis for the challenge, along with any evidence or explanatory materials, to the Director.

(b) The provisions of this section apply only to challenges to ownership or control listings or findings. The applicant or a person with an interest that is or may be adversely affected may not use these provisions to challenge liability or responsibility under any other provision of the Act or its implementing regulations.

(c) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the department must consult the regulatory authority with jurisdiction over the violation and the federal Office of Surface Mining Applicant Violator/System Office to obtain additional information.

(d) The department may request an investigation by the federal Office of Surface Mining Applicant/Violator System Office.

(e) At any time, a person listed in the Applicant/Violator System as an owner or controller of a surface coal mining operation, may request an informal explanation from the federal Office of Surface Mining Applicant/Violator System Office as to the ownership or control capacities shown in the Applicant/Violator System. Under 30 CFR 773.26 the federal Office of Surface Mining Applicant/Violator System Office will provide a response within fourteen (14) days of such request describing the ownership or control capacities listed in the Applicant/Violator System.

SECTION 10. 312 IAC 25-4-122.2 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-4-122.2 Burden of proof for ownership or control challenges**

**Authority: IC 14-34-2-1**

**Affected: 14-34**

**Sec. 122.2 (a) Upon challenge of a listing of ownership or control or a finding of ownership or control made under 312 IAC 25-4-114, the applicant or a person with an interest that is or may be adversely affected must prove by a preponderance of the evidence that the challenger either:**

- (1) Does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or**
- (2) Did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.**

**(b) In meeting the burden of proof, a challenger must present reliable, credible, and substantial evidence and any explanatory materials to the director. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If requested, the director will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under 312 IAC 25-4-15 and 113.**

**(c) Materials that may be submitted in response to the requirements of subsection (b) of this section include, but are not limited to:**

- (1) Notarized affidavits containing specific facts concerning the duties performed for the relevant operation, the beginning and ending dates of ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation;**
- (2) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;**
- (3) Certified copies of documents filed with or issued by any State, Municipality, or Federal governmental agency; and**
- (4) An opinion of counsel, when supported by –**
  - (i) Evidentiary materials;**
  - (ii) A statement by counsel that he or she is qualified to render the opinion; and**
  - (iii) A statement that counsel has personally and diligently investigated the facts of the matter.**

SECTION 11. 312 IAC 25-4-122.3 IS ADDED TO READ AS FOLLOWS:

**312 IAC 25-4-122.3 Written agency decision on challenges to ownership or control**

**Authority: IC 14-34-2-1**

**Affected: 14-34**

**Sec. 122.3 (a) Within sixty (60) days of receipt of a challenge under 312-IAC-25-4-122.1, the Director will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision will state the determination whether the party in question owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.**

**(b) The director will promptly provide the challenger with a copy of decision by either:**

**(1) Certified mail, return receipt requested; or**

**(2) Any means consistent with the rules governing service of a summons and complaint.**

**(c) Service of the decision is complete upon delivery and is not incomplete if refusal to accept delivery occurs.**

**(d) All decisions made under this section will be posted on the Applicant/Violator System.**

**(e) Any person who receives a written decision under this section shall be entitled administrative review under IC 4-21.5.**

**(f) Following the director's written decision, or any decision by a reviewing administrative or judicial tribunal, information in the Applicant/Violator System will be reviewed to determine if it is consistent with the decision. If it is not, the director will promptly revise the information in the Applicant/Violator System to reflect the decision.**

**SECTION 12: 312 IAC 25-4-127 IS AMENDED TO READ AS FOLLOWS:**

**312 IAC 25-4-127 Permit reviews; revisions, renewals, and transfer, sale, or assignment of rights granted under permits; permit revisions**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

**Sec. 127. (a) A revision to a permit shall be obtained according to the following:**

**(1) For changes in surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of conducting mining or reclamation operations contemplated by described in the original approved permit. Changes that constitute a significant departure shall include, but are not limited to, those that could result in the operator's inability to comply with 312 IAC 25-6-1 through 312 IAC 25-6-148 or present a hazard to public health and safety.**

**(2) When required by an order issued under section 126 of this rule.**

**(3) In order to continue operation after the cancellation or material reduction of the liability insurance policy, or performance bond upon which the original permit was issued.**

**(4) Permit revisions shall, at a minimum, be subject to the requirements of sections 108 through 123 of this rule.**

**(5) Any extensions to the area covered by a permit, except for incidental boundary revisions under subsection (g), shall be made by application for a new permit and**

shall not be approved under section 126 of this rule, this section, and sections 128 through 134 of this rule.

(b) The application for revision shall be filed in accordance with the following:

(1) ~~The permittee shall submit the application to the director within the time provided for under section 5(c) of this rule.~~

(2) Any application for a revision that proposes significant alterations in the operations described in the materials submitted in the application for the original permit under sections 16 through 107 of this rule or in the conditions of the original permit shall, at a minimum, be subject to the requirements of sections 108 through 123 of this rule.

A permit revision is one of the following:

(1) A significant revision described in subsection (d) of this section that is subject to the permit application information requirements and procedures of this rule including:

(A) notice;

(B) public participation; and

(C) notice of decision requirements;

under IC 4-21.5-3-5 and IC 14-34-4-13 before approval and implementation.

(D) The permittee shall submit the application for revision to the director within the time provided for under section 5(c) of this rule.

(2) A nonsignificant revision described in subsection (e) of this section that:

(A) must be reviewed by the director or the director's designated representative before implementation;

(B) approved in writing; and

(C) is not required to comply with the public notice and hearing requirements of this rule for issuance of a permit or significant revision;

(3) A minor field revision described in subsection (f) of this section that:

(A) a field inspector may approve in an inspection report or on a form signed in the field;

(B) does not require technical review or design analysis;

(C) is capable of being evaluated in the field by the director's designated delegate for compliance with the requirements of subsection (b) of this section;

(D) must be properly documented by the permittee consistent with the requirements of 312 IAC 25 concerning the proposed activities and that documentation submitted to the Director no more than 30 days following the date of field approval; and

(E) is not required to comply with the public notice and hearing requirements of this rule for issuance of a permit or significant revision.

(4) A determination by the director under subdivisions (2) and (3) above is subject to administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding. The request must be in writing and received by the Natural Resources Commission within 15 days of receipt of the determination by the director.

(c) ~~Any extensions to the area covered by a permit, except for incidental boundary revisions under subsection (d), shall be made by application for a new permit and shall not be approved under section 126 of this rule, this section, and sections 128 through 134~~

of this rule.

An application for a permit revision may not be approved unless the permittee demonstrates and the director or the director's designated representative finds that:

- (1) reclamation as required by this article can be accomplished;
- (2) the applicable requirements of IC 14-34-4-7 that are pertinent to the permit revision are met;
- (3) the permit revision complies with all applicable requirements of this rule; and
- (4) no other conditions for approval of the application need to be imposed.

(d) A proposed permit revision is a significant revision if any of the following conditions exist:

(1) The change may result in an adverse impact beyond that previously considered, affecting cultural resources that are listed on or eligible to be listed on the:

- (A) National Register of Historic Places; or
- (B) Indiana state register of historic sites and historic structures established under IC 14-21-1.

(2) Blasting will be used in a manner that is likely to cause adverse impacts beyond that previously considered to persons or property outside the permit area.

(3) The change may result in an adverse impact beyond that previously considered, affecting a water supply to which IC 14-25-4 applies.

(4) The change:

- (A) requires the identification, disturbance, or handling of toxic forming or acid forming materials in a manner different from that previously considered; and
- (B) has the potential for causing an additional impact not previously considered.

(5) The change may result in an adverse impact on fish, wildlife, and related environmental values beyond that previously considered.

(6) The addition of any following facility where the addition will cause an impact not previously considered:

- (A) a coal processing facility, except that the addition of a temporary coal processing facility used exclusively for crushing and screening need not be considered a significant revision; or
- (B) a permanent support facility.

(7) The change will cause a:

- (A) new or an updated probable hydrologic consequences determination; or
- (B) cumulative hydrologic impact analysis to be required under 312 IAC 25-4-115(a)(5).

(8) A postmining land use will be changed to any of the following:

- (A) A residential land use.
- (B) A commercial or industrial land use.
- (C) A recreational land use.
- (D) Developed water resources, as defined at 312 IAC 25-1-39, that meet the size criteria of 30 CFR 77.216(a).

(e) A proposed permit revision is a nonsignificant revision if any of the following conditions exit:

(1) For a surface mine within the permit area, a change of the:

- (A) direction of mining; or
- (B) location of mining equipment.
- (2) The substitution of mining equipment designed for the same purpose, the use of which is not detrimental to the achievement of final reclamation or subsidence control.
- (3) For an underground mine, any change in the direction or location of mining within the permit area or shadow area in response to unanticipated events.
- (4) Any other change in the mining or reclamation plan that the director reasonably determines:
  - (A) will not have a significant effect on:
    - (i) the achievement of final reclamation plans under 312 IAC 25-4;
    - (ii) subsidence control plans; and
    - (iii) the surrounding area;
  - (B) does not involve significant delay in achieving final reclamation or significant change in the land use; or
  - (C) is temporary and necessitated by:
    - (i) unanticipated and unusually adverse weather conditions;
    - (ii) other acts of God;
    - (iii) strikes; or
    - (iv) other causes beyond the reasonable control of the permittee; if all steps specified by the director to maximize environmental protection are taken.
- (f) A minor field revision may include the following:
  - (1) Soil stockpile location and configurations.
  - (2) As-built pond certifications.
  - (3) Minor transportation facilities changes.
  - (4) Any following change for a pond:
    - (A) Depth.
    - (B) Shape.
    - (C) Orientation.
  - (5) An area for:
    - (A) temporary drainage control; or
    - (B) temporary water storage.
  - (6) Equipment changes.
  - (7) Explosive storage areas.
  - (8) Minor mine management or support facility locations, except for the disposal or storage of refuse.
  - (9) Adding United States Natural Resources Conservation Service conservation practices.
  - (10) Methods of erosion protection on diversions.
  - (11) Minor diversion location changes.
- (g) Incidental boundary revision criteria consist of the following:
  - (1) Incidental boundary revisions are those that:
    - (A) do not constitute a significant ~~departure from~~ revision of the method of conduct of mining or reclamation operations contemplated by the original permit as defined

**described** in subsection (a)(1) (d);

(B) are required for the orderly and continuous mining and reclamation operation;

(C) adjoin the permit or **shadow area** acreage;

(D) would be mined and reclaimed in conformity with the approved permit plans; and

(E) do not exceed ten percent (10%) of the original permit acres or twenty (20) acres, whichever is less.

(2) The aggregate of all incidental boundary revisions for the permit shall not exceed fifteen percent (15%) of the original permit area, provided, however, the aggregate of all incidental boundary revisions that involve coal removal shall not exceed ten percent (10%) of the original permit area. The director may waive the fifteen percent (15%) aggregate limitation if the director finds all other provisions of subdivision (1) are met and the interests of the public will not be adversely affected.

(3) A permittee may obtain an incidental boundary revision by submitting to the director an application that shall contain the following information:

(A) The size of the original permit area, and of the additional area.

(B) The premining and postmining land uses.

(C) A showing that the other requirements of subdivisions (1) and (2) are satisfied.

(D) A map showing the **additional area to be added by the revision**.

(E) Proof of the permittee's legal right to enter and conduct surface coal mining and reclamation operations on the additional area.

(F) Any necessary plans that are not contained in the already approved permit.

(G) A statement indicating whether or not any areas unsuitable for mining as provided in 312 IAC 25-3-1 and 312 IAC 25-3-3 are contained within the proposed additional acreage.

(4) No application for an incidental boundary revision shall be approved unless the applicant demonstrates and the director finds the following:

(A) That reclamation as required by IC 14-34 and this article can be accomplished.

(B) The application complies with all requirements of IC 14-34 and this article.

(C) The pertinent findings required under section 115 of this rule are made.

(5) The director shall approve or deny the incidental boundary revision within thirty (30) days of submittal. The director may extend this thirty (30) day time limitation, where the director finds thirty (30) days is insufficient to adequately review the application and make the findings specified in subdivision (4).

(6) Nothing in this subsection shall be construed to alter the general requirements of IC 14-34 and this article for submittal of fees and bond.

(7) The director may require an applicant for an incidental boundary revision to protect, within the expanded boundaries, any historic or archaeological properties listed or eligible for listing on the National Register of Historic Places or the Indiana state register of historic sites and structures to prevent or minimize adverse impacts through appropriate mitigation and treatment measures. (*Natural Resources Commission; 312 IAC 25-4-127; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3494, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA*)

SECTION 13. 312 IAC 25-5-7 Period of liability IS AMENDED TO READ AS FOLLOWS

Authority: IC 14-34-2-1

Affected: IC 14-34-3; IC 14-34-6; IC 14-34-9; IC 14-34-10

Sec. 7. (a) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in 312 IAC 25-6-59 through 312 IAC 25-6-61, 312 IAC 25-6-120, and 312 IAC 25-6-122, except, with the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under sections 8 and 9 of this rule. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) The period of liability shall commence after the last year of augmented seeding, fertilizing, irrigation, or other work and shall continue for not less than five (5) years. The period of liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release, except as provided in 312 IAC 25-6-59. On lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, the liability period is two (2) years. To the extent that success standards are established by 312 IAC 25-6-59(c)(1) or 312 IAC 25-6-120(c)(1), the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(c) A portion of a bonded area requiring extended liability because of augmentation may be separated from the original area and bonded separately upon approval by the department. Before determining that extended liability should apply to only a portion of the original bonded area, the department shall determine that such portion:

- (1) is not significant in extent in relation to the entire area under the bond; and
- (2) is limited to isolated, distinguishable, and contiguous portions of the bonded area and does not comprise scattered or intermittent occurrences throughout the bonded area.

(d) If the department approves a long term intensive agricultural postmining land use, in accordance with 312 IAC 25-6-64 or 312 IAC 25-6-128, the applicable five (5) year or ten (10) year period of liability shall commence at the date of initial planting.

(e) The bond liability of the permittee shall include only those actions that the operator is obliged to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 312 IAC 25-6-64 or 312 IAC 25-6-128.

**(f) Implementation of an alternative postmining land use approved under 312 IAC 25-6-64(c) and 312 IAC 25-6-128(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in 312 IAC 25-5-16(d)(2).**

SECTION 14. 312 IAC 25-5-16 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 25-5-16 Performance bond release; requirements**

**Authority: IC 14-10-2-4; IC 14-34-2-1; IC 14-34-6-11**

**Affected: IC 4-21.5-3; IC 14-34-10-2; 30 CFR 800.40**

Sec. 16. (a) A permittee may file a request with the department for the release of



all or part of a performance bond or deposit. Within thirty (30) days after an application for bond or deposit release is filed with the department, the operator shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement must be part of any bond release application and shall include the following:

- (1) The precise location of the land affected.
- (2) The number of acres.
- (3) The permittee's name.
- (4) The permit number and the date approved.
- (5) The amount of the bond filed and the portion sought to be released.
- (6) The type and appropriate dates of reclamation work performed.
- (7) A description of the results achieved relative to the operator's approved

reclamation plan.

The advertisement shall also state that any person with a valid legal interest that might be adversely affected by release of the bond, or the responsible officer or head of any federal, Indiana, or local governmental agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operations, may file written comments or objections or may request a public hearing concerning the proposed release from bond with the department within thirty (30) days after the last publication of notice. The notice shall contain the address of the division for submission of comment and the calendar date for the close of the comment period. In addition, as part of any bond release application, the applicant shall submit copies of letters that the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality in which the surface coal mining and reclamation activities took place, providing notification of the request to seek release from the bond.

(b) The director may initiate an application for the release of a bond. If a bond release application is initiated by the director, the department shall perform the notification and certification requirements otherwise imposed on the permittee under this section

(c) The permittee shall include in the application for bond release a notarized statement that certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of this article and the approved reclamation plan. The certification shall be submitted for each application or phase of bond release.

(d) Within thirty (30) days after receipt of the notification and request, or as soon afterwards as weather conditions permit, the department shall conduct an inspection and evaluation of the reclamation work. The evaluation shall consider, among other things, the following:

- (1) The degree of difficulty to complete any remaining reclamation.
- (2) Whether pollution of surface and subsurface water is occurring.
- (3) The probability pollution will continue.
- (4) The estimated cost of abating the pollution.

The surface owner, agent, or lessee shall be given notice of the inspection by the director and may participate with the department in the inspection. The department shall notify, in writing, the permittee and any other interested person of a decision whether to release all or part of the performance bond or deposit within sixty (60) days after receipt of the

request if no public hearing or informal conference is held under subsection (i) or (j) or if an informal conference is held under subsection (i) or public hearing is held under subsection (j) within thirty (30) days after the informal conference or public hearing is completed.

(e) The department may release the bond or deposit, in whole or in part, upon a determination the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by IC 14-34 according to the following schedule:

(1) Phase I. After the operator completes the backfilling, regrading, and drainage control of a bonded area under the approved reclamation plan, sixty percent (60%) of the bond or collateral for the applicable permit may be released.

(2) Phase II. After the operator establishes revegetation on the regraded mined lands under the approved reclamation plan, an additional twenty-five percent (25%) of the total original bond amount may be released. No part of the bond or deposit shall be released under this subdivision if the lands to which the release would be applicable are contributing suspended solids to the streamflow or run-off outside the permit area in excess of the limitations in IC 14-34 and until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area as determined from the soil survey performed under IC 14-34. If a siltation structure is to be retained as a permanent impoundment, a bond release may occur under this subdivision if provisions for sound future maintenance by the operator or the landowner are made with the department.

(3) Phase III. The department may release the remaining bond only after the:

(A) operator has successfully completed all surface coal mining and reclamation activities required in IC 14-34, this article, or the permit; and

(B) expiration of the period specified for operator responsibility in IC 14-34-10-2.

(f) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in section 12 of this rule, in writing:

(1) stating the reasons for disapproval; and

(2) recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(g) If an application is made submitted for total or partial bond release, the department shall notify any municipality in which a surface coal mining operation is located by certified mail at least thirty (30) days before granting the release.

~~(h) A determination by the director under the provisions of this article or IC 14-34 is subject to review. An affected person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1. The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding.~~

**Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local government agency that has jurisdiction by law or is authorized to develop and enforce environmental standards with respect to the operation may file written objections to the proposed release and request a public hearing with the department within thirty (30) days after the last publication of the notice under subsection (a).**

(i) Upon receipt of written objection ~~or~~ and a request for public hearing under subsection (a) (h), the department, at the discretion of the director, may set a dispute

under this section for an informal conference to resolve the objection. **The informal conference shall be conducted within thirty (30) days after the close of the period for filing written comments or objections, or requests for public hearing as specified in subsection (a). The department shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties in electronic or stenographic format. The department shall furnish all parties with written findings based upon the informal conference stating the reasons for the findings.** Conduct of an informal conference does not alter or prejudice the rights and responsibilities under this section of any of the following:

- (1) A permittee.
- (2) A person who files objections.
- (3) The department.
- (4) Another interested person.

(j) If **written objections and request for public hearing** are filed under subsection (a) **(h)** are not resolved through an informal conference, **or an informal conference is not conducted**, the department shall hold a public hearing within a reasonable time following receipt of the request. The public hearing shall be conducted as follows:

- (1) The date, time, and location of the public hearing shall be sent to the permittee and other **interested** parties to the hearing and advertised by the department in a newspaper of general circulation in the county where the surface coal mining and reclamation operation proposed for bond release is located one (1) time each week for two (2) consecutive weeks.
- (2) The requirements of IC 4-21.5-3 shall not apply to the conduct of the public hearing. The public hearing shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the public hearing. An electronic or stenographic record shall be made unless waived by all parties. The record shall be maintained and shall be accessible to the parties of the public hearing until final release of the applicant's performance bond or other equivalent guarantee under this article. **The public hearing shall be conducted in the locality of the surface coal mining operation proposed for bond release, or, at the option of the person filing the hearing request, in Indianapolis or Jasonville.**

(3) The department shall furnish all parties of the public hearing with the following:

- (A) The written findings of the director based on the public hearing.
- (B) The reasons for the findings.

(4) **The public hearing shall be conducted within thirty (30) days after receipt of the request for the hearing or within (30) days after the date of an informal conference under subsection (i).**

(5) If all parties requesting the public hearing withdraw their request before the conference is held, the public hearing may be canceled.

(k) **For the purpose of the public hearing conducted under subsection (j), the department shall have the authority to:**

- (1) administer oaths;
- (2) subpoena witnesses or written or printed materials;
- (3) compel the attendance of witnesses or production of the materials; and
- (4) take evidence, including, but not limited to, inspections of the land affected and other surface coal mining operations carried on by the applicant and operator in the

general vicinity. A verbatim record, electronic or stenographic, of each public hearing shall be made and a transcript made available on the motion of any party or by order of the department.

(l) A determination by the director under the provisions of this article or IC 14-34 is subject to administrative review. ~~An affected person may obtain administrative review under IC 4-21.5 and 312 IAC 3-1.~~ The division of hearings of the commission shall, as soon as practicable, conduct any appropriate proceeding. The request for administrative review must be in writing and received by the Natural Resources Commission within 15 days of receipt of the determination by the director. (*Natural Resources Commission; 312 IAC 25-5-16; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3506, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; filed Apr 1, 2004, 3:00 p.m.: 27 IR 2455, eff Jan 1, 2005; errata filed Sep 8, 2004, 2:42 p.m.: 28 IR 214; filed Nov 6, 2006, 8:58 a.m.: 20061206-IR-312060068FRA, eff Oct 31, 2007, except subsections (d), (e), (f), (g), (h), (i), and (j), see 20071031-IR-312060068ONA; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA*)

SECTION 15. 312 IAC 25-6-59 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 25-6-59 Surface mining; revegetation; standards for success for nonprime farmland**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

Sec. 59. (a) Success of revegetation is judged on the following:

- (1) The effectiveness of the vegetation for the approved postmining land use.
- (2) The extent of cover compared to the cover occurring in natural vegetation in the area.
- (3) The general requirements of section 54 of this rule.
- (b) Ground cover, production, and stocking are satisfactory if they are not less than ninety percent (90%) of the success standard as determined by the sampling techniques under section 60 of this rule and the statistical methodology under section 61 of this rule.
- (c) Standards for success are applied under the approved postmining land use and must include the following conditions:
  - (1) For a previously mined area that was not reclaimed under sections 1 through 58 of this rule, this section, and sections 60 through 148 of this rule, the ground cover of living plants shall be as follows:
    - (A) Not less than can be supported by the best available topsoil or other suitable material in the reaffected area.
    - (B) Not less than the cover existing before redisturbance.
    - (C) Adequate to control erosion.
  - (2) For an area to be developed for an industrial/commercial or a residential use less than two (2) years after regrading is completed, the ground cover of living plants shall be not less than what is required to control erosion.
  - (3) For pastureland, the ground cover success standard shall be one hundred percent (100%). In addition, the production of living plants on the revegetated area shall be equal to one (1) of the following:

- (A) An approved reference area.
- (B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

- (C) A target yield determined by the following formula:

Target Yield = NRCS Target Yield  $\times$  (CCA/10 Year CA)

Where: NRCS Target Yield = The average yield per acre, as predicted by the Natural Resources Conservation Service, for the crop and the soil map units being evaluated. The most current yield information at the time of permit issuance shall be used and shall be contained in the appropriate sections of the permit application.

CCA = The county average for the crop for the year being evaluated as reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

10 Year CA = The 10 year Indiana Agricultural

Statistics Service county average, consisting of the year being evaluated and the 9 preceding years.

- (D) Other methods approved by the director.
- (E) The method for establishing the standard, once selected, may not be modified without the approval of the director.

(4) For an area to be developed as a shelter belt, ~~or for~~ a fish and wildlife habitat, recreation, or forestry land use, the success of vegetation is determined on the basis of tree, shrub, or half-shrub stocking and ground cover. The area seeded to a ground cover is not acceptable unless the director determines the ground cover is adequate to control erosion. Stocking rates are those in the approved permit reclamation plan and are not less than the following:

(A) **For a forestry use, four hundred fifty (450) plantings per acre for forestry use, or such stocking rate and species approved in the reclamation plan for a specific forest reclamation approach.**

(B) A rate appropriate to support a shelter belt or a land use (other than forestry) described in this subsection. The rate established under this clause may be adjusted for particular areas within a shelter belt or land use in order to support a diverse wildlife habitat if the adjusted rate is approved in the plan of reclamation and will not result in erosion.

(5) For an area to be used as cropland, crop production on the revegetated area must be at least equal to one (1) of the following:

- (A) An approved reference area.
- (B) Current Natural Resources Conservation Service predicted yield by soil map unit. If this method is used, the standard for success shall be a weighted average of the predicted yields for each unmined soil type that existed on the permit area at the time the permit was issued.

- (C) A target yield determined by the following formula:

Target Yield = CCA  $\times$  (NRCSP/NRCSC)

Where: CCA = The county average for the crop for the year being evaluated as

reported by the United States Department of Agriculture crop reporting service, the Indiana Agricultural Statistics Service.

NRCSP = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that existed on the permit area at the time the permit was issued.

NRCSC = The weighted average of the current Natural Resources Conservation Service predicted yield for each croppable, unmined soil that is shown to exist in the county on the most current county soil survey.

A croppable soil is any soil that the Natural Resources Conservation Service has defined as being in capability Class I, II, III, or IV.

- (D) Other methods approved by the director.
- (E) The method for establishing the standard, once selected, may not be modified without the approval of the director.
- (6) A crop grown to demonstrate satisfaction of the requirements of subdivision (5) must be one (1) or more of the crops listed in 312 IAC 25-1-33 and as specified in the reclamation plan. An adjustment to predicted crop yields may be made according to accepted agronomic practices, after consultation with the Natural Resources Conservation Service or other sources approved by the director for factors, including disease, weather, tillage management, pests, and seed or plant selection.
- (7) The aggregate of the barren areas within an area under evaluation must not exceed five percent (5%) of the area. Revegetation is not successful unless each barren area within an area under evaluation is as follows:
  - (A) Smaller than seven hundred fifty (750) square feet.
  - (B) Completely surrounded by desirable vegetation.
  - (C) In compliance with sections 11 and 50 of this rule.
- (d) A single reference area may be used for more than one (1) permit area if the requirements of this subsection are met with respect to each permit area. A reference area used to establish success standards under this section must meet the following requirements:
  - (1) If the area to be represented contains more than fifty (50) acres, the reference area shall contain at least five (5) acres unless the director approves a smaller area. If the area to be represented contains less than fifty (50) acres, the reference area shall be the greater of:
    - (A) ten percent (10%) of the area to be represented; or
    - (B) one (1) acre.
  - (2) Each reference area shall be representative of the geology, soils, slopes, and vegetation of the area to be represented.
  - (3) Management of the reference area shall be identical to the area to be represented.
  - (4) Each reference area must be located within twenty (20) miles of the area to be represented.
  - (5) Right-of-entry on the reference area for the authorized representatives of the director must be secured by written agreement or consent for the entire period in which the reference area will be used.
- (e) In determining the period of responsibility under 312 IAC 25-5-7, the director may approve selective husbandry practices (except for augmented seeding, fertilization, or

irrigation) without extending the period of responsibility for revegetation success and bond liability if:

- (1) the selective husbandry practices can be expected to continue as part of the postmining land use; or
- (2) discontinuance of the practices after the liability period will not reduce the probability of permanent revegetation success.

(f) Selective husbandry practices that may be approved under subsection (e) are normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area and may include the following:

- (1) Disease, pest, and vermin control.
- (2) Repair of rills and gullies.
- (3) Pruning, reseeding, or transplanting specifically necessitated by these practices.

(g) The success standards identified in subsection (c) shall be met during the growing seasons of any two (2) years of the responsibility period, except the first year, for cropland or pastureland. The success standards for any other land use are measured by the last year of the responsibility period. *(Natural Resources Commission; 312 IAC 25-6-59; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3537, eff Dec 1, 2001; errata filed Aug 17, 2001, 1:50 p.m.: 25 IR 106; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

#### SECTION 16. 312 IAC 25-6-93 IS AMENDED TO READ AS FOLLOWS:

##### **312 IAC 25-6-93 Underground mining; explosives; general requirements**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

Sec. 93. (a) This section and sections 94 through 97 of this rule apply ~~only to surface~~ blasting activities incident to underground mining, ~~including initial rounds of. These rules do not apply when blasts are detonated, for slopes, and shafts, and similar activities at depths greater than fifty (50) vertical feet below the original ground surface.~~

(b) Each permittee must comply with Indiana and federal laws which regulate the use of explosives.

(c) All blasting operations conducted after July 1, 1987, shall be conducted under the direct supervision of a certified blaster.

(d) A permittee must comply with the following blast design requirements:

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

(A) one thousand (1,000) feet of any building used as a dwelling (not owned by the permittee), public building, school, church, or community or institutional building;

or

(B) five hundred (500) feet of an active or abandoned underground mine; ~~or~~

~~(C) one thousand (1,000) feet of a pipeline.~~

(2) The blast design may be presented as part of a permit application or at a time, prior to the blast, approved by the director.

- (3) The blast design shall contain sketches of the typical drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of the structures to be protected, as well as a discussion of design factors to be used, that protect the public and meet the applicable airblast, ground-vibration, and flyrock standards of section 96 of this rule.
  - (4) The blast design shall be prepared and signed by a certified blaster.
  - (5) The director may require changes to the design submitted if necessary to protect public safety or prevent damage to structures described in subdivision (1).
  - (e) The certified blaster and at least one (1) other person shall be present at the firing of a blast. The certified blaster shall either physically detonate the charge or give the order to detonate the charge.
  - (f) Each person responsible for blasting operations at a blast site shall be familiar with the approved blasting plan, and site-specific performance standards.
  - (g) Each person responsible for blasting operations shall possess a valid certification under 312 IAC 9. A certified blaster must make all decisions concerning the following:
    - (1) Blast hole size, spacing, or depth.
    - (2) The quantity of explosives in each hole.
    - (3) The total quantity of explosives to be detonated.
    - (4) The delay periods to be used.
- (Natural Resources Commission; 312 IAC 25-6-93; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3558, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

SECTION 17. 312 IAC 25-6-94 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 25-6-94 Underground mining; explosives; preblasting survey**

**Authority:** IC 14-34-2-1

**Affected:** IC 14-34

- Sec. 94. (a) At least thirty (30) days before the initiation of blasting, the permittee shall notify in writing all residents, ~~operators of pipeline,~~ or owners of dwellings or other structures located within one-half (1/2) mile of the permit area how to request a preblasting survey.
- (b) The applicant or permittee shall ~~cause the~~ **notify the public by** publication, at least once a week for four (4) consecutive weeks in a local newspaper of general circulation in the county in which the blasting will occur, ~~of a notification that the applicant or permittee~~ **they** will conduct a preblasting survey upon the request by a resident or owner of a manmade dwelling or structure within one (1) mile of any portion of the permit area. A copy of the public notice and publisher's affidavit or other proof of publication shall be filed with the director not later than four (4) weeks after the last date of publication.
- (c) On the written request to the director or the permittee by a resident or owner of a dwelling or structure that is located within one (1) mile of any ~~surface blasting activity~~ **portion of the permit area** covered by section 93 of this rule, this section, and sections 96 through 97 of this rule, the permittee shall promptly conduct a survey of the dwelling or structure and promptly submit a report of the survey to the director and to the person requesting the survey. If a structure is renovated or added to subsequent to a survey, upon



request by the resident or owner, a survey of the additions or renovations shall be performed by the permittee under this section.

(d) The survey shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of cisterns, wells, other water systems, pipelines, cables, transmission lines, and similar structures warrant special attention. Assessment of these structures may be limited to surface condition and other readily available data.

(e) A written report of the survey shall be prepared and signed by the person who conducts the survey. Copies of the report shall be promptly provided to the person requesting the survey and to the director. If a preblasting survey is conducted by a permittee upon its own initiative as part of a voluntary program to encourage all dwelling owners to have preblasting surveys, where no request for a preblasting survey has been made of the director or the permittee, the survey need not be submitted to the director. If the person requesting the survey disagrees with the results of the survey, that person may notify in writing both the permittee and the director of the specific areas of disagreement.

(f) All survey requests received by the permittee more than ten (10) days before the planned initiation of blasting shall be completed by the permittee before the initiation of blasting. A request received less than ten (10) days before the initiation of blasting shall be completed promptly but need not be completed prior to initiation of blasting.

*(Natural Resources Commission; 312 IAC 25-6-94; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

**SECTION 18. 312 IAC 25-6-95 IS AMENDED TO READ AS FOLLOWS:**

**312 IAC 25-6-95 Underground mining; explosives; publication of blasting schedule**

**Authority: IC 14-34-2-1**

**Affected: IC 14-34**

Sec. 95. (a) Blasting schedule publication and distribution requirements are as follows:

(1) Each permittee shall publish a blasting schedule at least ten (10) days, but not more than thirty (30) days, before beginning a surface blasting program in which blasts that use more than five (5) pounds of explosive or blasting agent are detonated. The blasting schedule shall be published in a newspaper of general circulation in the locality of the blasting site.

(2) Copies of the schedule shall be distributed to local governments and public utilities and by mail to each residence within one-half (1/2) mile of the proposed blasting area described in the schedule.

(3) The permittee shall republish and redistribute the schedule pursuant to subdivisions (1) and (2) at least every twelve (12) months.

(b) Blasting schedule contents. The blasting schedule shall contain at a minimum, the following:

(1) Identification of the specific areas in which blasting will take place; .

(2) Days and time periods when explosives are to be detonated; .

(3) Methods to be used to control access to the blasting area; .

(4) Types and patterns of audible warnings and all-clear signals to be used before and

after blasting.

(5) Name, address and telephone number of the permittee.

(c) Before surface blasting in areas or at times not in a previous blasting schedule, the permittee shall prepare a revised blasting schedule and shall publish and distribute the revised schedule according to the procedures in subsections (a) and (b) **of this section**. ~~The revised blasting schedule shall be approved by the director before publication and distribution.~~

(d) A copy of the public notice and publisher's affidavit or other proof of publication of the public notice required by subsections (a) and (c) shall be filed with the director not later than four (4) weeks after the last date of publication. *(Natural Resources Commission; 312 IAC 25-6-95; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3559, eff Dec 1, 2001; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)*

**SECTION 19. 312 IAC 25-7-5 IS AMENDED TO READ AS FOLLOWS:**

**312 IAC 25-7-5 State enforcement; cessation orders**

**Authority:** IC 14-34-2-1

**Affected:** IC 14-34-3-1; IC 14-34-10-2; IC 14-34-15-6

Sec. 5. (a) An authorized representative of the director, when conducting an inspection, shall immediately order a cessation of the portion of the surface coal mining and reclamation operation relevant to the condition, practice, or violation if he finds any condition or practice, or any violation of IC 14-34-10-2, or any condition of a permit required by IC 14-34-3-1, or any condition of an exploration approval which condition, practice, or violation:

- (1) creates an imminent danger to the health or safety of the public; or
- (2) is causing, or can reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

(b) An authorized representative of the director shall immediately issue a cessation order to any person who does not hold a valid permit to conduct those operations.

(c) Where the director or the director's authorized representative finds that the ordered cessation of surface coal mining operation, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources in the most expeditious manner physically possible, the director shall, in addition to the cessation order, impose affirmative obligations on the permittee requiring him to take whatever steps the director deems necessary to abate the imminent danger or the significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(d) When, on the basis of an inspection, an authorized representative of the director, for good cause shown and upon written findings, finds that a notice of violation has been issued under section 6(a) of this rule and the person to whom it was issued fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, he or she shall immediately order a cessation of coal

exploration or that portion of the surface mining and reclamation operations relevant to the violation.

(e) A cessation order issued under this section shall require the person to whom it is issued to take the steps necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(f) A cessation order issued under this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

- (1) the nature of the condition, practice, or violation;
- (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;
- (3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and
- (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(g) An authorized representative of the director may modify, terminate, or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(h) An authorized representative of the director shall terminate a cessation order by written notice to the person to whom the order was issued:

- (1) for a cessation order under subsection (a) or (b), when the authorized representative of the director determines that the condition or practice resulting in the issuance of the cessation order has been abated; or
- (2) for a cessation order under subsection (d), when steps necessary to abate the violations covered by the order have been completed.

(i) Termination of a cessation order shall not prohibit the director from assessing civil penalties for those violations under sections 13 through 21 of this rule.

(j) The order shall remain in effect until the condition or practice resulting in the issuance of the cessation order has been abated or until vacated, modified, or terminated in writing by an authorized representative of the director or until the order expires under IC 14-34-15-6(d).

(k) Within 30 days after a cessation order is issued under this section or under 30 CFR 843.11, (except where **an administrative law judge or a court of competent jurisdiction grants** a stay of the cessation order **is and the stay remains in effect**), the permittee shall provide the director with written documentation to establish one (1) of the following:

- (1) There has been no change since the immediately preceding submittal of information under 312 IAC 25-4-17.
- (2) The information required from a permit application by 312 IAC 25-4-17, if not previously submitted.
- (3) The information needed to correct or update (to the date of the cessation order) information previously submitted and corrections or updates as needed.

(l) The director, within sixty (60) days after issuing a cessation order, shall notify, in writing, any person who has been identified under subsection (k) and 312 IAC 25-4-17 as owning or controlling the permittee, that the cessation order was issued and

that the person has been identified as an owner or controller.

**(m) Any determinations made under this section shall be in writing and shall contain a right of appeal under IC 4-21.5. (Natural Resources Commission; 312 IAC 25-7-5; filed Jun 21, 2001, 2:53 p.m.: 24 IR 3592, eff Dec 1, 2001; errata filed Nov 20, 2001, 11:55 a.m.: 25 IR 1182; readopted filed May 29, 2007, 9:51 a.m.: 20070613-IR-312070146RFA)**

**SECTION 20. THE FOLLOWING ARE REPEALED: 312 IAC 25-4-23, 312 IAC 25-4-64**



# United States Department of the Interior

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Mid-Continent Region  
William J. Beatty Federal Building  
501 Belle Street  
Alton, Illinois 62002



SEP 30 2009

Mr. Bruce Stevens, Division Director  
Department of Natural Resources  
Division of Reclamation  
R.R. 2, Box 129  
Jasonville, IN 47438-9517

Dear Mr. Stevens:

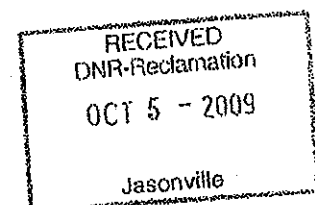
The Office of Surface Mining Reclamation and Enforcement (OSM) has published a series of changes to the Ownership and Control (O&C) and related rules. The changes relate to certain regulatory definitions and provisions pertaining to review of applications; permit eligibility; application information; applicant, operator, and permittee information; automated information entry and maintenance; permit suspension and rescission; ownership and control findings and challenge procedures; transfer, assignment, or sale of permit rights; and alternative enforcement. Some of these changes are in response to Federal Court decisions addressing challenges to our rulemaking efforts. All litigation and court challenges to these rules have now been settled, withdrawn, and/or dismissed.

Under 30 CFR 732.17(d), OSM must notify States of all changes in the Act and the Federal regulations which will require an amendment to the State program. Pursuant to 30 CFR 732.17(c), OSM must also notify States whenever it determines that such amendments are in fact required. In compliance with these regulations, OSM has determined that you must amend Indiana's Regulatory Program to be no less effective than the recent changes to the Federal regulations. Enclosure A is a table listing the portions of the Federal Regulations where OSM has determined Indiana's regulatory program is less effective.

The second enclosure relevant to these rule changes is:

Enclosure B) Major Program Changes as a Result of the October 28, 1994; December 19, 2000; and December 3, 2007 Federal Regulations at 30 CFR Parts 701, 773, 774, 778, 840, 843 and 84.

The following three *Federal Register* notices contain the specifics regarding the aforementioned changes. Please contact your OSM Field Office Director if you would like electronic versions of these notices.



- 1) Final *Federal Register* notice - Ownership and Control; Permit and Application Information; Transfer, Assignment, or Sale of Permit rights – published December 3, 2007 (72 FR 68000).
- 2) Final *Federal Register* notice - Application and Permit Information Requirements; Permit Eligibility; Definitions of Ownership and Control; the AVS; Alternative Enforcement – published December 19, 2000 (65 FR 79582).
- 3) Final *Federal Register* notice - Use of the AVS in Surface Coal Mining and Reclamation Permit Approval; Standards and Procedures for Ownership and Control Determinations – published on October 28, 1994 (59 FR 54306).

In accordance with 30 CFR 732.17(f)(1), I am requesting that, within 60 days of this letter, you submit either a proposed written amendment or a description of an amendment to be proposed in response to the revised Federal regulations, and a timetable for enactment. The timetable should include the dates by which you intend to submit the amendments and a schedule for the State legislative and rule making procedures. If you believe no amendment is necessary in a specific instance, please so advise and OSM will consider any rationale you wish to submit.

Below is a link to OSM Directive STP-1 which may assist you in better understanding the amendment submittal and review processes.

<http://www.osmre.gov/guidance/directives/directive944nc.pdf>

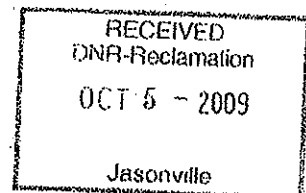
Please address all submittals to Andrew R. Gilmore, Chief, Alton Field Division. If you have any questions or requests for assistance, please call Andrew R. Gilmore at (317)226-6700.

Sincerely,

  
Ervin J. Barchenger  
Regional Director

Enclosures (2)

cc: Andrew R. Gilmore, Chief, AFD

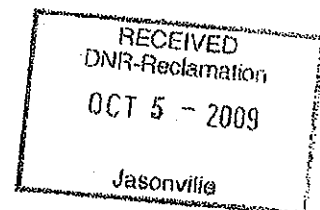


## Enclosure A

Indiana

### 30 CFR Sections Where the State Program is Less Effective

773.11 (a)(1), (a)(2), (a)(3), (a)(4), (b) Review of Compliance History
773.12 (c) Permit Eligibility Determination
773.26 (a), (b), (c), (d), (e) How to Challenge and Ownership or Control Listing or Finding
773.27 (a), (a)(1), (a)(2), (b), (c), (c)(1), (c)(2), (c)(3), (c)(4), (c)(4)(i), (c)(4)(ii), (c)(4)(iii) Burden of Proof for Ownership or Control Challenges
773.28 (a), (b), (b)(1), (b)(2), (c), (d), (e), (f) Written Agency Decision on Challenges to Ownership or Control Listings or Finding
774.12 (c), (c)(1), (c)(2) Post-permit Issuance Information Requirements for Permittees



MAJOR PROGRAM CHANGES AS A RESULT OF THE  
OCTOBER 28, 1994; DECEMBER 19, 2000; and DECEMBER 3, 2007  
FEDERAL REGULATIONS AT  
30 CFR PARTS 701, 773, 774, 778, 840, 843 AND 847  
(59 FR 54306, 65 FR 79582 AND 72 FR 68000)

IMPORTANT! This Narrative documents only those rule changes that may be considered major changes. It does not address or include the net results of all changes from the 2000 and 2007 rules. For complete documentation of all rule language and rule organizational changes, refer to the Side-by-Side Rule Changes Template.

A. 30 CFR 701.5 Definitions

[insert State counterpart or state that there is No State Counterpart]

1. Applicant Violator System or AVS means an automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act.

[2000 rule, 65 FR 79662]

Note: The preamble discussion for the 2000 amendment can be found at 65 FR 79594.

2. Control or controller, when used in parts 773, 774, and 778 of this chapter, refers to or means---

(a) A permittee of a surface coal mining operation;

(b) An operator of a surface coal mining operation; or

(c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

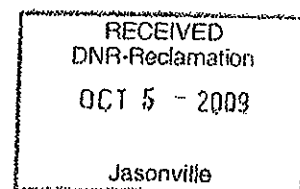
[2007 rule, 72 FR 68029]

Note: In the 2000 rule, we defined *control* separately from *ownership* (the previous regulations defined a compound term, "*owns or controls*" and "*owned or controlled*," discontinued the use of rebuttable presumptions of ownership or control (e.g., an officer or director was previously presumed to be an owner or controller), and provided examples of persons who may be controllers. See preamble discussion for the 2000 amendments at 65 FR 79594-79595; 79596-79604.

In the 2007 rule, we continued to define *control* separately from *ownership*, retained the flexible "ability to determine" standard, removed certain specific categories of controllers (e.g., general partners in a partnership) from the definition (because if these persons are controllers then they can be captured under the "ability to determine" standard), and removed the examples of control. See preamble discussion for the 2007 amendments at 72 FR 68003.

3. Knowing or knowingly means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

[2000 rule, 65 FR 79662]





Note: In the 2000 rule, we broadened the scope of the definition and replaced the term "individual" with the term "person" so as to include business entities. See preamble discussion for the 2000 amendment at 65 FR 79604-79605.

4. *Own, owner, or ownership*, as used in parts 773, 774, and 778 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.  
[2007 rule, 72 FR 68029]

Note: In the 2000 rule, we defined *control* separately from *ownership* (the previous regulations defined a compound term, "'owns or controls' and 'owned or controlled.'" We revised the definition to include sole proprietors, added a reference to *controlling* instruments of ownership, and clarified that the definition did not apply to ownership of real property. See preamble discussion for the 2000 amendments at 65 FR 79594-79596.

In the 2007 rule, we removed the reference to controlling instruments of ownership; we found that reference to "control" concepts was confusing, given that *control* is a separately defined term. Instead, we used the term "owning of record," which is found in the Act. See preamble discussion for the 2007 amendment at 72 FR 68005-68007.

5. *Transfer, assignment, or sale of permit rights* means a change of a permittee.

[2007 rule, 72 FR 68029]

Note: In the 2007 rule, we removed the effects of any definition of ownership or control on the definition of *transfer, assignment, or sale of permit rights* or the implementing procedures. The new definition is a better reflection of the Act and removes confusion by disentangling transfer, assignment, or sale of permit rights from section 510(c) of SMCRA. See preamble discussion for the 2007 amendment at 72 FR 68008-68010.

6. *Violation*, when used in the context of the permit application information or permit eligibility requirements of sections 507 and 510(c) of the Act and related regulations, means --

(1) A failure to comply with an applicable provision of a Federal or State law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or

(2) A noncompliance for which OSM has provided one or more of the following types of notice or a State regulatory authority has provided equivalent notice under corresponding provisions of a State regulatory program --

(i) A notice of violation under § 843.12 of this chapter.

(ii) A cessation order under § 843.11 of this chapter.

(iii) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under part 845 or 846 of this chapter.

(iv) A bill or demand letter pertaining to delinquent reclamation fees owed under part 870 of this chapter.

(v) A notice of bond forfeiture under § 800.50 of this chapter when --

(A) One or more violations upon which the forfeiture was based have not been abated or corrected;

(B) The amount forfeited and collected is insufficient for full reclamation under § 800.50(d) (1) of this chapter, the regulatory authority orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order; or

(C) The site is covered by an alternative bonding system approved under § 800.11(e) of this chapter, that system requires reimbursement of any reclamation costs incurred by the system above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

[2000 rule, 65 FR 79662 & 79663]

Note: In the 2000 rule, this term was defined for the first time and separately from *violation notice* to distinguish action or inaction that constitutes a violation from the written notification of a violation. The definition added a new violation type at (2) (v), when the amount forfeited and collected is insufficient for full reclamation, the regulatory authority is authorized to order reimbursement of the additional reclamation costs. See 2000 rule preamble discussion beginning at 65 FR 79605.

7. *Violation, failure or refusal*, for purposes of parts 724 and 846 of this chapter, means --

(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

[2000 rule, 65 FR 79663]

Note: This definition was clarified in the 2000 rule as being applicable only to parts 724 and 846 (Individual Civil Penalties) of the regulation. See 2000 rule preamble discussion at 65 FR 79606.

8. *Violation notice* means any written notification from a regulatory authority or other governmental entity, as specified in the definition of *violation* in this section. [2000 rule, 65 FR 79663]

Note: The revised definition clarifies that the term means the written notification of a violation from a regulatory authority or other governmental entity. See 2000 rule preamble discussion at 65 FR 79605.

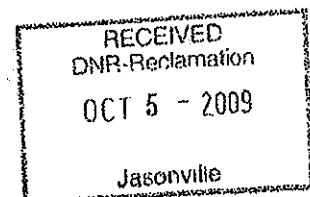
9. *Willful or Willfully* means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted --

(1) Intentionally, voluntarily, or consciously; and

(2) With intentional disregard or plain indifference to legal requirements.

[2000 rule, 65 FR 79663]

Note: In the 2000 rule, we clarified that the term applies to violations, failures to abate or correct violations, and the scope is broadened from "individuals" to *person(s)* to include business entities. See 2000 rule preamble discussion beginning at 65 FR 79606.



10. The definition of "Willful violation" was removed from the Federal regulations. [2000 rule, 65 FR 79662].

**\*B. 30 CFR 724.5 Definitions.**

[insert State counterpart or state that there is No State Counterpart]

Section 724.5, Definitions, was removed from the Federal regulations in the 2000 rule. the section contained the definitions for "knowingly," now *knowing* or *knowingly*, *violation*, *failure or refusal*, and "willfully," now *willful* or *willfully*. All three definitions were revised and moved to 30 CFR 701.5. See 2000 rule, 65 FR 79663, and the preamble discussions at 65 FR 79604-79605 and 79606-79607.

**\*C. 30 CFR 773.5 Definitions.**

[insert State counterpart or state that there is No State Counterpart]

The contents of previous § 773.5 was removed from the Federal regulations and the section designation has been reassigned in the total reorganization of Part 773. The surviving definitions for *Applicant/Violator System (AVS)*, "Owned or controlled and owns or controls," and *Violation notice* were revised and moved to 30 CFR 701.5. The permanently removed definitions are "Federal violation notice," "State violation notice," and "Ownership or control link." See 2000 rule, 65 FR 79663, and the preamble discussion at 65 FR 79607.

**\*D. 30 CFR Part 773 Requirements for Permits and Permit Processing**

[insert State counterpart or state that there is No State Counterpart]

Part 773 has been completely reorganized. The reorganization includes new sections, removed sections, revised section headings, and significant revisions of previous sections and provisions. The reorganization of this part clarifies the permit eligibility review process, permit eligibility determinations and the presumption of NOV abatement, AVS data entry requirements, written findings of the permit eligibility determination, suspension and revocation of permits, and challenges of ownership and control listings and findings. See 65 FR 79663-79667 and the preamble discussions at 65 FR 70607-79641.

Please refer to the Rule Changes Side-by-Side Template to see the revised Table of Contents for Part 773.

Added by Ann

**E. Application and Permit Review Requirements**

**1. 30 CFR 773.7 Review of permit applications.**

[insert State counterpart or state that there is No State Counterpart]

(a) The regulatory authority will review an application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.6(c) of this part, the decision will be made within 60 days of the close of the conference.

(b) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

[2000 rule, 65 FR 79663 (redesignation only) and 2007 Rule, 72 FR 68029]

Note: The 2007 rule corrects a cross-reference and eliminates a cross-reference that is no longer necessary under the revised regulatory scheme.

2. 30 CFR 773.8 General provisions for review of permit application information and entry of information into AVS.

[insert State counterpart or state that there is No State Counterpart]

(a) Based on an administratively complete application, we, the regulatory authority, must undertake the reviews required under §§ 773.9 through 773.11 of this part.

(b) We will enter into AVS --

(1) The information you are required to submit under §§ 778.11 and 778.12(c) of this subchapter.

(2) The information you submit under § 778.14 of this subchapter pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

(c) We must update the information referred to in paragraph (b) of this section in AVS upon our verification of any additional information submitted or discovered during our permit application review.

[2000 rule, 65 FR 79663 and 2007 rule, 72 FR 68029]

Note: Created from regulatory provisions previously found in separate provisions in Part 773 and provisions in the Memoranda of Understanding between OSM and States concerning AVS operation, this section includes a new requirement to enter Notice of Violations (NOVs) into AVS if they remain unabated or uncorrected after the period for abatement or correction has expired. See the 2000 rule preamble discussion at 65 FR 79605 of the definitions of *Violation* and *Violation notice*.

In the 2007 rule, we amended certain cross-references based upon other changes in the rulemaking.

3. 30 CFR 773.9 Review of applicant and operator information.

[insert State counterpart or state that there is No State Counterpart]

(a) We, the regulatory authority, will rely upon the information that you, the applicant, are required to submit under § 778.11 of this subchapter, information from AVS, and any other available information, to review you and your operator's organizational structure and ownership or control relationships.

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(b) We must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under § 773.12 of this part.  
[2000 rule, 65 FR 79664 and 2007 rule, 72 FR 68029]

Note: This section was newly constructed in the 2000 rule. It is the first of a three-part review process and revises the previous review process. The revised process clarifies the review requirements leading to a permit eligibility determination. The preamble discussion in the 2000 rule language is at 65 FR 79612-79614.

In 2007, this section was revised such that controllers are no longer required to be disclosed by applicants and their operators under § 778.11. Therefore, the reference to controllers in application reviews has been removed. See preamble discussion in the 2007 rule at 72 FR 68010-68011.

4. 30 CFR 773.10 Review of permit history.

[insert State counterpart or state that there is No State Counterpart]

(a) We, the regulatory authority, will rely upon the permit history information you, the applicant, submit under § 778.12 of this subchapter, information from AVS, and any other available information to review you and your operator's permit histories. We must conduct this review before making a permit eligibility determination under § 773.12 of this part.

(b) We will also determine if you or your operator have previous mining experience.

(c) If you or your operator do not have any previous mining experience, we may conduct an additional review under § 774.11(E) of this subchapter. The purpose of this review will be to determine if someone else with mining experience controls the mining operation.

[2000 rule, 65 FR 79664 and 2007 rule, 72 FR 68029]

Note: In the 2000 rule, this section was newly constructed to allow for an additional review by the regulatory authority if the applicant, operator or controller do not indicate previous mining experience in their required disclosure under § 778.12 or it is otherwise determined that the applicant, operator, or controller have no previous mining experience. This circumstance could indicate the possibility of an undisclosed controller. Section 773.10 is part two of the clarified application review process. See 2000 rule preamble discussion at 65 FR 79615.

In the 2007 rule, this section was revised to remove the applicability to controllers without mining experience because this rulemaking removed the requirement under Part 778 for applicants and operators to disclose their controllers. However, the section retains the provision for an additional review to determine if there are undisclosed controllers when an applicant or operator is determined to have no previous mining experience. See 2007 rule preamble discussion at 72 FR 68011.

5. 30 CFR 773.11 Review of compliance history.

[insert State counterpart or state that there is No State Counterpart]

(a) We, the regulatory authority, will rely upon the violation information supplied by you, the applicant, under § 778.14 of this subchapter, a report from AVS, and any other available information to review histories of compliance with

the Act or the applicable State regulatory program, and any other applicable air or water quality laws, for --

- (1) You;
- (2) Your operator;
- (3) Operations you own or control; and
- (4) Operations your operator owns or controls.

(b) We must conduct the review required under paragraph (a) of this section before making a permit eligibility determination under § 773.12 of this part.  
[2000 rule, 65 FR 79664]

Note: This is a new section in the 2000 rule and is part three of the three-part application review process adopted in the 2000 rule. It was constructed from previous provisions in Part 773. One major change from the previous compliance review provisions is the requirement of a compliance report from AVS and not just a review of the information found in AVS. See the 2000 rule preamble discussion at 65 FR 79616 and 79620.

6. 30 CFR 773.12 Permit eligibility determination.

[insert State counterpart or state that there is No State Counterpart]

Based on the reviews required under §§ 773.9 through 773.11 of this part, we, the regulatory authority, will determine whether you, the applicant, are eligible for a permit under section 510(c) of the Act.

(a) Except as provided in §§ 773.13 and 773.14 of this part, you are not eligible for a permit if we find that any surface coal mining operation that --

- (1) You directly own or control has an unabated or uncorrected violation; or
- (2) You or your operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited on or after November 2, 1988.

(b) We will not issue you a permit if you or your operator are permanently ineligible to receive a permit under § 774.11(c) of this subchapter.

(c) After we approve your permit under § 773.15 of this part, we will not issue the permit until you comply with the information update and certification requirement of § 778.9(d) of this subchapter. After you complete that requirement, we will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect your permit eligibility under paragraphs (a) and (b) of this section. We will request this report no more than five business days before permit issuance under § 773.19 of this part.

(d) If you are ineligible for a permit under this section, we will send you written notification of our decision. The notice will tell you why you are ineligible and include notice of your appeal rights under part 775 of this subchapter and 43 CFR 4.1360 through 4.1369.

[2000 rule, 65 FR 79664 and 2007 rule, 72 FR 68029]

Note: In the 2000 rule, this new section was constructed based in part on the previous eligibility provisions. It also contains provisions to comport with appellate court decisions resulting from the NMA lawsuits. It also includes a new regulatory requirement to perform an AVS compliance check no sooner than 5 days before anticipated permit issuance and to make the report from AVS part of the record of the review. See the 2000 rule preamble discussion at 65 FR 79620.

In the 2007 rule the reach of permit denial is amended. At paragraph (a), permits may be denied only if an applicant directly (one level down) owns or controls, or if the applicant or operator indirectly

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controls an entity with an unabated or uncorrected ("outstanding") violation if the control and the violation occurred after November 2, 1988. At paragraph (b), the reference to "independent authority" for denial is removed, but its removal does not represent a policy change. See the 2007 rule preamble discussion at 72 FR 68011.

7. 30 CFR 773.13 Unanticipated events or conditions at remining sites.

[insert State counterpart or state that there is No State Counterpart]

(a) You, the applicant, are eligible for a permit under § 773.12 if an unabated violation --

(1) Occurred after October 24, 1992; and

(2) Resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was --

(i) Issued before September 30, 2004, including subsequent renewals; and

(ii) Held by the person applying for the new permit.

(b) For permits issued under § 785.25 of this subchapter, an event or condition is presumed to be unanticipated for the purpose of this section if it --

(1) Arose after permit issuance;

(2) Was related to prior mining; and

(3) Was not identified in the permit application.

[2000 rule, 65 FR 79664]

Note: This section was created in the 2000 rule from previous provisions to contribute to the improved organization of Part 773.. It was also revised to correct an erroneous date reference from the 1995 rule. See the 2000 rule preamble discussion at 65 FR 79620 on the proposed changes to previous § 773.15(b)(4).

8. 30 CFR 773.14 Eligibility for provisionally issued permits.

[insert State counterpart or state that there is No State Counterpart]

(a) This section applies to you if you are an applicant who owns or controls a surface coal mining and reclamation operation with --

(1) A notice of violation issued under § 843.12 of this chapter or the State regulatory program equivalent for which the abatement period has not yet expired; or

(2) A violation that is unabated or uncorrected beyond the abatement or correction period.

(b) We, the regulatory authority, will find you eligible for a provisionally issued permit under this section if you demonstrate that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this section --

(1) For violations meeting the criteria of paragraph (a) (1) of this section, you certify that the violation is being abated to the satisfaction of the regulatory authority with jurisdiction over the violation, and we have no evidence to the contrary.

(2) As applicable, you, your operator, and operations that you or your operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the agency with jurisdiction over the violation.

(3) You are pursuing a good faith --

(i) Challenge to all pertinent ownership or control listings or findings under §§ 773.25 through 773.27 of this part; or

(ii) Administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

(4) The violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

(c) We will consider a provisionally issued permit to be improvidently issued, and we must immediately initiate procedures under §§ 773.22 and 773.23 of this part to suspend or rescind that permit, if --

(1) Violations included in paragraph (b) (1) of this section are not abated within the specified abatement period;

(2) You, your operator, or operations that you or your operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in paragraph (b) (2) of this section;

(3) In the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in paragraph (b) (3) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding; or

(4) The initial judicial review decision referenced in paragraph (b) (3) (ii) or (4) of this section affirms the validity of the violation or the ownership or control listing or finding.

[2000 rule, 65 FR 79664 and 2007 rule, 72 FR 68029]

Note: This section was newly constructed in the 2000 rule to address the presumption of NOV abatement. One primary change was that "conditionally" issued permits would now be called "provisionally" issued permits. This was done to make a distinction between provisionally issued permits and permits issued with conditions under § 773.17. See 2000 rule preamble discussion at 65 FR 79622.

In the 2007 rule, this section was amended to indicate that an applicant "will" be eligible to receive a permit when the criteria under § 773.14 are met rather than the previous "may" be eligible to receive a provisionally issued permit if the applicant is pursuing a good faith appeal. See preamble discussion at 72 FR 68012.

9. 30 CFR 773.15 Written findings for permit application approval.

[Insert State counterpart or state that there is No State Counterpart]

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(a) The application is accurate and complete and the applicant has complied with all requirements of the Act and the regulatory program.

(b) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(c) The proposed permit area is --

(1) Not within an area under study or administrative proceedings under a petition, filed pursuant to parts 764 and 769 of this chapter, to have an area

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designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(2) Not within an area designated as unsuitable for surface coal mining operations under parts 762 and 764 or 769 of this chapter or within an area subject to the prohibitions of § 761.11 of this chapter.

(d) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(e) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(f) The applicant has demonstrated that any existing structure will comply with § 701.11(d), and the applicable performance standards of subchapter B or K of this chapter.

(g) The applicant has paid all reclamation fees from previous and existing operations as required by subchapter R of this chapter.

(h) The applicant has satisfied the applicable requirements of part 785 of this chapter.

(i) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of § 816.111(d) or 817.111(d).

(j) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(k) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the regulatory authority has determined that no additional protection measures are necessary.

(l) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of §§ 816.106 or 817.106 of this chapter, the site of the operation is a previously mined area as defined in § 701.5 of this chapter.

(m) For permits to be issued under § 785.25 of this chapter, the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(n) The applicant is eligible to receive a permit, based on the reviews under §§ 773.7 through 773.14 of this part.

[2000 rule, 65 FR 79665]

Note: This section was extracted from a previous section and redesignated in the 2000 rule. New requirements were added to mandate written findings by the regulatory authority for permit approval and eligibility ~~and that the application is complete, accurate, and in compliance.~~ See the 2000 rule preamble discussion at 65 FR 79620. ~~Added by Ann~~

10. 30 CFR 773.16 Performance bond submittal.

[insert State counterpart or state that there is No State Counterpart]

Note: This section was extracted from previous provisions in part 773 and redesignated. This amendment to our rules, intended to be in the 2000 rule, was published in a *Federal Register* correction notice at 66 FR 16127, March 23, 2001.

11. 30 CFR 773.17 Permit Conditions.

[insert State counterpart or state that there is No State Counterpart]

Note: In the 2000 rule, previous paragraph (h) was removed from § 773.17. During the construction of § 773.14, we determined that a clear distinction was required between permit conditions and the status of a permit issued where the applicant has an unabated or uncorrected violation at the time of the permit eligibility determination and carries specific obligations that must be met to keep the permit. See the 2000 rule preamble discussion at 65 FR 79624.

• Added by Ann

12. 30 CFR 773.21 Initial review and finding requirements for improvidently issued permits.

[insert State counterpart or state that there is No State Counterpart]

(a) If we, the regulatory authority, have reason to believe that we improvidently issued a permit to you, the permittee, we must review the circumstances under which the permit was issued. We will make a preliminary finding that your permit was improvidently issued if, under the permit eligibility criteria of the applicable regulations implementing section 510(c) of the Act in effect at the time of permit issuance, your permit should not have been issued because you or your operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

(b) We will make a finding under paragraph (a) of this section only if you or your operator --

(1) Continue to own or control the operation with the unabated or uncorrected violation;

(2) The violation remains unabated or uncorrected; and

(3) The violation would cause you to be ineligible under the permit eligibility criteria in our current regulations.

(c) When we make a preliminary finding under paragraph (a) of this section, we must serve you with a written notice of the preliminary finding, which must be based on evidence sufficient to establish a prima facie case that your permit was improvidently issued.

(d) Within 30 days of receiving a notice under paragraph (c) of this section, you may challenge the preliminary finding by providing us with evidence as to why the permit was not improvidently issued under the criteria in paragraphs (a) and (b) of this section.

(e) The provisions of §§ 773.25 through 773.27 of this part apply when a challenge under paragraph (d) of this section concerns a preliminary finding under

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paragraphs (a) and (b) (1) of this section that you or your operator currently own or control, or owned or controlled, a surface coal mining operation.  
[2000 rule, 65 FR 79665 and 2007 rule, 72 FR 68029]

Note: This section was revised in the 2000 rule. It sets forth the process for review and making of preliminary findings. See the 2000 rule preamble discussion at 65 FR 79626.

In the 2007 rule, this section was clarified to emphasis that a preliminary finding requires evidence sufficient for a prima facie case and that notices must be given in writing to the subject of the finding. See the 2007 rule preamble discussion at 72 FR 68012.

13. 30 CFR 773.22 Notice requirements for improvidently issued permits.

[insert State counterpart or state that there is No State Counterpart]

(a) We, the regulatory authority, must serve you, the permittee, with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension of rescission, if --

(1) After considering any evidence submitted under § 773.21(d) of this part, we find that a permit was improvidently issued under the criteria in paragraphs (a) and (b) of § 773.21 of this part; or

(2) Your permit was provisionally issued under § 773.14(b) of this part and one or more of the conditions in §§ 773.14(c) (1) through (4) exists.

(b) If we propose to suspend your permit, we will provide 60 days notice.

(c) If we propose to rescind your permit, we will provide 120 days notice.

(d) If you wish to appeal the notice, you must exhaust administrative remedies under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority).

(e) After we serve you with a notice of proposed suspension or rescission under this section, we will take action under § 773.23 of this part.

(f) The regulations for service at § 843.14 of this chapter, or the State regulatory program equivalent, will govern service under this section.

(g) The times specified in paragraphs (b) and (c) of this section will apply unless you obtain temporary relief under the procedures at 43 CFR 4.1376 or the State regulatory program equivalent.

[1994 Procedures rule, 59 FR 54353; 2000 rule, 65 FR 79665; 2007 rule, 72 FR 68029]

Note: The 2000 rule requires the regulatory authority provide a written notice of proposed suspensions or rescissions and the provisions specify the thresholds of considerations. See the 2000 rule preamble discussion at 65 FR 79626.

In the 2007 rule the requirement to post a proposed suspension or rescission (d) is removed. See the 2007 rule preamble discussion at 72 FR 68013. Also, the 2007 rule removes the requirement to post at the AVS Office Internet website. However, the rule retains both the requirement to post notices at the closest office for §773.23(c)(2), and the requirement to post a final agency decision on an ownership or control on the AVS database, not the AVS Office's Internet website, at §773.28(d). See the 2007 rule language at 72 FR 68029-68030.

14. 30 CFR 773.23 Suspension or rescission requirements for improvidently issued permits.

[insert State counterpart or state that there is No State Counterpart]

(a) Except as provided in paragraph (b) of this section, we, the regulatory authority, must suspend or rescind your permit upon expiration of the time specified in § 773.22(b) or (c) of this part unless you submit evidence and we find that --

(1) The violation has been abated or corrected to the satisfaction of the agency with jurisdiction over the violation;

(2) You or your operator no longer own or control the relevant operation;

(3) Our finding for suspension or rescission was in error;

(4) The violation is the subject of a good faith administrative or judicial appeal (unless there is an initial judicial decision affirming the violation, and that decision remains in force);

(5) The violation is the subject of an abatement plan or payment schedule that is being met to the satisfaction of the agency with jurisdiction over the violation; or

(6) You are pursuing a good faith challenge or administrative or judicial appeal of the relevant ownership or control listing or finding (unless there is an initial judicial decision affirming the listing or finding, and that decision remains in force).

(b) If you have requested administrative review of a notice of proposed suspension or rescission under § 773.22(e) of this part, we will not suspend or rescind your permit unless and until the Office of Hearings and Appeals or its State counterpart affirms our finding that your permit was improvidently issued.

(c) When we suspend or rescind your permit under this section, we must --

(1) Issue you a written notice requiring you to cease all surface coal mining operations under the permit; and

(2) Post the notice at our office closest to the permit area.

(d) If we suspend or rescind your permit under this section, you may request administrative review of the notice under the procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority). Alternatively, you may seek judicial review of the notice.

[1994 Procedures rule, 59 FR 54354; as corrected at 59 FR 61656; 2000 rule, 65 FR 79665; 2007 rule, 72 FR 68029]

Note: Prior to the 2000 rule, § 773.23 was titled "Review of ownership or control and violation information." In the 2000 rule, the provisions from this section were removed because we no longer used presumptions of ownership or control, or links to violations, based upon presumptions of ownership or control. This section was then titled "Suspension or rescission requirements for improvidently issued permits." See the 2000 rule preamble discussion at 65 FR 79627.

The 2007 rule removed Internet posting requirements, clarified notice procedures for preliminary findings, and required that only final notices will be posted at closest office to the permit area. See the 2007 rule preamble discussion at 72 FR 68013. Also, the 2007 rule removes the requirement to post at the AVS Office's Internet website. However the rule retains both the requirement to post notices at the closest office for § 773.23(c)(2), and the requirement to post a final agency decision on an ownership or control challenge on the AVS database, not AVS Office's Internet website, at § 773.28(d). See the 2007 rule language at 72 FR 68029-68030.

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F. Ownership or Control Challenges

1. 30 CFR 773.25 Who may challenge ownership or control listings and findings.

[insert State counterpart or state that there is No State Counterpart]

You may challenge a listing or finding of ownership or control using the provisions under §§ 773.26 and 773.27 of this part if you are --

- (a) Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;
- (b) Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§ 773.21 or 774.11(g) of this subchapter; or
- (c) An applicant or permittee affected by an ownership or control listing or finding.

[2000 rule, 65 FR 79666 and 2007 rule, 72 FR 68029]

Note: This section was revised and redesignated in the 2000 rule. As a result, previous § 773.24 was removed. Section 773.25 provides for challenges to ownership or control listings or findings regardless of whether there is a pending application. See the 2000 rule preamble discussion at 65 FR 79631.

In the 2007 rule, paragraph (b) was revised to update a cross-reference.

2. 30 CFR 773.26 How to challenge an ownership or control listing or finding.

[insert State counterpart or state that there is No State Counterpart]

This section applies to you if you challenge an ownership or control listing or finding.

(a) To challenge an ownership or control listing or finding, you must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials you wish to provide under § 773.27(b) of this part, to the regulatory authority, as identified in the following table.

If the challenge concerns a...	Then you must submit a written explanation to...
(1) a pending State or Federal permit application...	The regulatory authority with jurisdiction over the application.
(2) your ownership or control of a surface coal mining operation, and you are not currently seeking a permit...	The regulatory authority with jurisdiction over the surface coal mining operation.

(b) The provisions of this section and of §§ 773.27 and 773.28 of this part apply only to challenges to ownership or control listings or findings. You may not use these provisions to challenge your liability or responsibility under any other provision of the Act or its implementing regulations.

(c) When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit

application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS Office to obtain additional information.

(d) A regulatory authority responsible for deciding a challenge under paragraph (a) of this section may request an investigation by the AVS Office.

(e) At any time, you, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an informal explanation from the AVS Office as to the reason you are shown in AVS in an ownership or control capacity. Within 14 days of your request, the AVS Office will provide a response describing why you are listed in AVS.

[2000 rule, 65 FR 79666 and 20007 rule, 72 FR 68029]

Note: The 2000 rule provided revised and clarified guidelines for challenges. A table was introduced to help determine the proper authority for challenges. The availability of the AVS Office to provide information and investigative assistance was added. See the 2000 rule preamble discussion at 65 FR 79631.

The 2007 rule revised the table to clarify that challenges must be submitted in writing to the regulatory authority with jurisdiction over a pending permit, or in situations without a pending permit, to the regulatory authority with jurisdiction over the associated mining operation(s). The 2007 rule also clarified so that a person listed in AVS may request an informal explanation from the AVS Office at any time and should expect a response within 14 days. See the 2007 rule preamble discussion at 72 FR 68013.

### 3. 30 CFR 773.27 Burden of proof for ownership or control challenges.

[insert State counterpart or state that there is No State Counterpart]

This section applies to you if you challenge an ownership or control listing or finding.

(a) When you challenge a listing of ownership or control, or a finding of ownership or control made under § 774.11(g) of this subchapter, you must prove by a preponderance of the evidence that you either --

(1) Do not own or control the entire operation or relevant portion or aspect thereof; or

(2) Did not own or control the entire operation or relevant portion or aspect thereof during the relevant time period.

(b) In meeting your burden of proof, you must present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. The materials presented in connection with your challenge will become part of the permit file, an investigation file, or another public file. If you request, we will hold as confidential any information you submit under this paragraph which is not required to be made available to the public under § 842.16 of this chapter (when OSM is the regulatory authority) or under § 840.14 of this chapter (when a State is the regulatory authority).

(c) Materials you may submit in response to the requirements of paragraph (b) of this section include, but are not limited to --

(1) Notarized affidavits containing specific facts concerning the duties that you performed for the relevant operation, the beginning and ending dates of your ownership or control of the operation, and the nature and details of any transaction creating or severing your ownership or control of the operation.

(2) Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.

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(3) Certified copies of documents filed with or issued by any State, municipal, or Federal governmental agency.

(4) An opinion of counsel, when supported by --

(i) Evidentiary materials;

(ii) A statement by counsel that he or she is qualified to render the opinion; and

(iii) A statement that counsel has personally and diligently investigated the facts of the matter.

[2000 rule, 65 FR 79666 and 2007 rule, 72 FR 68030]

Note: In the 2000 rule this section was introduced as a separate section carved out of previous § 773.25 - Standards for challenging ownership or control links and the status of violations. See the 2000 rule preamble discussion at 65 FR 79631.

The evidentiary standards language was clarified in the 2007 rule to point out that the burden for the challenger in either a finding or a listing is to prove by "a preponderance of the evidence" that they are not owners or controllers of the operation. The burden of persuasion remains on the challenger.

The regulatory authority will have established a *prima facie* case in making a finding of ownership or control. A listing of ownership or control is based upon a submission or disclosure of information under 30 CFR 778.11, 30 CFR 774.12, or other comparable circumstance. A listing in AVS by the regulatory authority based on this information is not subject to the *prima facie* standard because it is information provided to the regulatory authority by the applicant, permittee, or operator. See the 2007 rule preamble discussion at 72 FR 68014.

4. 30 CFR 773.28 Written agency decision on challenges to ownership or control listings or findings.

[insert State counterpart or state that there is No State Counterpart]

(a) Within 60 days of receipt of your challenge under § 773.26(a) of this part, we, the regulatory authority identified under § 773.26(a) of this part, will review and investigate the evidence and explanatory materials you submit and any other reasonably available information bearing on your challenge and issue a written decision. Our decision must state whether you own or control the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

(b) We will promptly provide you with a copy of our decision by either --

(1) Certified mail, return receipt requested; or

(2) Any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or its State regulatory program counterparts.

(c) Service of the decision on you is complete upon delivery and is not incomplete if you refuse to accept delivery.

(d) We will post all decisions made under this section on AVS.

(e) Any person who receives a written decision under this section, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR 4.1380 through 4.1387 or, when a State is the regulatory authority, the State regulatory program counterparts, before seeking judicial review.

(f) Following our written decision or any decision by a reviewing administrative or judicial tribunal, we must review the information in AVS to determine if it is

consistent with the decision. If it is not, we must promptly revise the information in AVS to reflect the decision.  
[2000 rule, 65 FR 79666 and 2007 rule, 72 FR 68030]

Note: The 2000 rule revised the 1994 requirements for a written agency decision, as well as the service and appeals procedures were defined for State challenges where there are State pending applications. We also added a 60-day deadline for the issuance of a decision. See the 2000 rule preamble discussion at 65 FR 79637.

The 2007 rule removes the requirement to post the written agency decision on the AVS Office Internet website. However, the requirement to post notices at the closest office and the requirement to post a final agency decision on an ownership or control challenge on the AVS database, not the AVS Office's Internet website, at §773.28(d) are retained. See the 2007 rule language at 72 FR 68029-68030.

**G. 30 CFR Part 774: Revision; Renewal; Transfer, Assignment, or Sale of Permit Rights; and Other Actions Based on Ownership, Control, and Violation Information**

[insert State counterpart or state that there is No State Counterpart]

Note: The 2000 rule amended the title of Part 774 and the Table of Contents. This amendment reflected the subject matter added to this part at new §§ 774.11 and 774.12. In the 2007 rule, we amended certain provisions in § 774.11 and in § 774.17.

We added requirements for regulatory authorities to enter and maintain AVS information and added provisions for regulatory authority actions in the face of potential undisclosed controllers of applicants and permittees. We moved regulatory authority provisions for determining permanent permit ineligibility to this part from Part 773. We also added requirements for permittees to provide updates to information initially provided under Part 778 when specific circumstances occur. The major changes from these rulemaking actions are discussed immediately below.

Please refer to the Rule Changes Side-by-Side Template to see the revised Table of Contents for Part 774.

\*Added by Ann

**H. Post-permit Issuance Requirements**

1. 30 CFR 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

[insert State counterpart or state that there is No State Counterpart]

(a) For the purposes of future permit eligibility determinations and enforcement actions, we, the regulatory authority, must enter into AVS the data shown in the following table --

We must enter into AVS all...	within 30 days after...	RECEIVED DNR-Reclamation OCT 5 - 2009 Jasonville
(1) Permit records	the permit is issued or	



(2) unabated or uncorrected violations	subsequent changes made.
(3) changes to information initially required to be provided by an applicant under 30 CFR 778.11.	The abatement or correction period for a violation expires.
(4) changes in violation status	Receiving notice of a change.
	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

(b) If, at any time, we discover that any person owns or controls an operation with an unabated or uncorrected violation, we will determine whether enforcement action is appropriate under part 843, 846 or 847 of this chapter. We must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

(c) We must serve a preliminary finding of permanent permit ineligibility under section 510(c) of the Act on you, an applicant or operator, if the criteria in paragraphs (c)(1) and (c)(2) are met. In making a finding under this paragraph, we will only consider control relationships and violations which would make, or would have made, you ineligible for a permit under §§ 773.12(a) and (b) of this subchapter. We must make a preliminary finding of permanent permit ineligibility if we find that --

(1) You control or have controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 510(c) of the Act; and

(2) The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate your intent not to comply with the Act, its implementing regulations, the regulatory program, or your permit.

(d) You may request a hearing on a preliminary finding of permanent permit ineligibility under 43 CFR 4.1350 through 4.1356.

(e) Entry into AVS.

(1) If you do not request a hearing, and the time for seeking a hearing has expired, we will enter our finding into AVS.

(2) If you request a hearing, we will enter our finding into AVS only if that finding is upheld on administrative appeal.

(f) At any time, we may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If we identify such a person, we must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. Our written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

(g) After we issue a written preliminary finding, under paragraph (f) of this section, we will allow you, the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate your lack of ownership or control. If after reviewing any information you submit, we are persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, we still find that you are an owner or controller, or if you do not submit any information within the 30-day period, we will issue a written finding and enter our finding into AVS.

(h) If we identify you as an owner or controller under paragraph (g) of this section, you may challenge the finding using the provisions of §§773.25, 773.26, and 773.27 of this subchapter.

[2000 rule, 65 FR 79667 and 2007 rule, 72 FR 68030]

Note: In the 2000 rule, we created § 774.11 to subsume data entry and maintenance provisions from the Memoranda of Understanding with States regarding AVS operation; better organize provisions for certain required regulatory authority actions previously provided for in Part 773 that are based on ownership, control and violation information; and specify which outcomes would be posted on AVS and other media. The rule also adds provisions for identifying an undisclosed controller who may be the "alter ego" of an applicant or permittee or a "true" applicant or permittee. See the 2000 rule preamble discussions at 65 FR 79629, 79630, and 79640.

\*Added by Ann

\*\*Note: Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, or violation information.

The 2000 O&C rule requires regulatory authorities to provide timely entry and updates of violation information in the AVS and to use alternative enforcement actions to compel the abatement or corrections of violations. See the 2000 O&C rule preamble discussion at 65 FR 79629.

\*\* Omitted from original by Ann

In the 2007 rule, the following paragraphs in § 774.11 were amended for clarification.

- (a) Removes reference to ownership and control information and amended the AVS data entry and maintenance table.
  - (e) Requires that permanent permit ineligibility be entered into AVS only after a hearing and administrative review or after the time for such hearing or review has passed.
  - (f) Clarifies that there must be a preliminary finding of ownership or control and that such a finding requires *prima facie* evidence.
  - (g) Clarifies that responses or non-responses to preliminary finding notices of ownership or control will be reviewed by the regulatory authority and a written decision will be provided. Final decisions will be entered into AVS within 30 days after the decision.
  - (h) Clarifies that those subject to a written finding of ownership or control may challenge the finding using the procedures in §§ 773.25, 773.26, and 773.27.
- See the 2007 rule preamble discussion at 72 FR 68015.

## 2. 30 CFR 774.12 Post-permit issuance information requirements for permittees.

[insert State counterpart or state that there is No State Counterpart]

- (a) Within 30 days after the issuance of a cessation order under § 843.11 of this chapter, or its State regulatory program equivalent, you, the permittee, must provide or update all the information required under § 778.11 of this subchapter.
- (b) You do not have to submit information under paragraph (a) of this section if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.
- (c) Within 60 days of any addition, departure, or change in position of any person identified in § 778.11(c) of this subchapter, you must provide --
  - (1) The information required under § 778.11(d) of this subchapter; and
  - (2) The date of any departure.

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[2000 rule, 65 FR 79667 and 2007 rule, 72 FR 68030]

Note: The 2000 rule created a new section from previous provisions and the Memoranda of Understanding with States regarding AVS operation to consolidate the information required from coal mining operators under § 778.11 after a permit has been issued. See the 2000 rule preamble discussion at 65 FR 79641-42 and 78667.

In the 2007 rule, we amended § 774.12 to remove a cross-reference in paragraph (c) to a provision in § 778.11 that was removed by way of this rulemaking due to procedural concerns and determined to be at odds with the goal of the 2000 rule to create clarity in the information required from applicants and permittees. See the 2007 rule preamble discussion at 72 FR 68017.

\*Wording changed by Ann from original done by Stephanie....meaning remains the same however

# I. Transfer, Assignment, or Sale of Permit Rights (TAS)

## 30 CFR 774.17 Transfer, assignment, or sale of permit rights.

[insert State counterpart or state that there is No State Counterpart]

(a) General. No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority. At its discretion, the regulatory authority may allow a prospective successor in interest to engage in surface coal mining and reclamation operations under the permit during the pendency of an application for approval of a transfer, assignment, or sale of permit rights submitted under paragraph (b) of this section, provided that the prospective successor in interest can demonstrate to the satisfaction of the regulatory authority that sufficient bond coverage will remain in place.

(b) Application requirements. An applicant for approval of the transfer, assignment, or sale of permit rights shall--

(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including --

(i) The name and address of the existing permittee and permit number or other identifier;

(ii) A brief description of the proposed action requiring approval; and

(iii) The legal, financial, compliance, and related information required by part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under subchapter J of this chapter.

(c) Public participation. Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) Criteria for approval. The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor --

(1) Is eligible to receive a permit in accordance with §§ 773.12 and 773.15 of this chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by subchapter J of this chapter; and

(3) Meets any other requirements specified by the regulatory authority.

(e) Notification.

(1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.

(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) Continued operation under existing permit. The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

[2000 rule, 65 FR 79668 and 2007 rule, 72 FR 68030]

Note: The 2000 rule revised cross-references in § 774.17 based on other provisions adopted in the rulemaking.

\*Added by Ann

2007 rule clarifies at paragraphs (a) and (d) that at the regulatory authorities' discretion, a prospective successor in interest, with sufficient bond coverage, may continue to mine during the TAS process. Also noted is that a successor in interest remains the *prospective* permittee until the approval process for the new permit is complete. See the 2007 rule preamble discussion at 72 FR 68018.

#### J. 30 CFR Part 778 Permit Applications – Minimum Requirements for Legal, Financial, Compliance, and Related Information

Note: Note: The 2000 rule amended the Table of Contents for Part 778. This amendment reflected the addition of a new section and the reorganization of the subject matter previous to this part. We added new provisions to allow applicants for permits to take advantage of the information in AVS to reduce the burden of providing repetitive hard-copy information on multiple permits. We reorganized the previous identification of interests (previous § 778.13) into smaller sections to clarify and streamline the separate categories of requirements. We removed the requirement to identify all but one of an applicant's controllers. See the 2000 rule language at 65 FR 79668-79669 and the preamble discussions at 65 FR 79642-79651.

In the 2007 rule, we removed provisions in § 778.11 that addressed controllers that, upon further consideration, we believe to be burdensome and potentially confusing. We clarified that the burden of identifying persons who meet the definition of *control* or *controller* is on a regulatory authority, it is not the burden of applicants and operators to identify their controllers in applications or otherwise. We also removed the requirement to disclose the person responsible for submitting OSM-1 forms but added a requirement that an applicant and its operator must disclose complete ownership information, up to and including the ultimate parent entity. The major changes from these rulemaking actions are discussed immediately below. See the 2007 rule language at 72 FR 69031 and the preamble discussion at 72 FR 68019-68024.

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Please refer to the Rule Changes Side-by-Side Template to see the revised Table of Contents for Part 778.

\*Added by Ann

## K. Applicant/Permittee Information Requirements

### 1. 30 CFR 778.9 Certifying and updating existing permit application information.

[insert State counterpart or state that there is No State Counterpart]

In this section, "you" means the applicant and "we" or "us" means the regulatory authority.

(a) If you have previously applied for a permit and the required information is already in AVS, then you may update the information as shown in the following table.

If...	then you...
(1) All or part of the information already in AVS is accurate and complete	may certify to us by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.
(2) Part of the information in AVS is missing or incorrect	must submit to us the necessary information or corrections and swear or affirm, under oath and in writing, that the information you submit is accurate and complete.
(3) You can neither certify that the data in AVS is accurate and complete nor make needed corrections	must include in your permit application the information required under this part.

(b) You must swear or affirm, under oath and in writing, that all information you provide in an application is accurate and complete.

(c) We may establish a central file to house your identity information, rather than place duplicate information in each of your permit application files. We will make the information available to the public upon request.

(d) After we approve an application, but before we issue a permit, you must update, correct, or indicate that no change has occurred in the information previously submitted under this section and §§ 778.11 through 778.14 of this part. [2000 rule, 65 FR 79668]

Note: This is a new section adopted in the 2000 rule. It was designed to reduce paperwork and burden for applicants for permits. Applicants may certify to the status of their information in AVS, thereby avoiding the need for an applicant and operator to submit identical information in multiple

applications to the regulatory authority and for the regulatory authority to review and compare multiple submissions to the information in AVS. See the 2000 rule preamble discussion at 65 FR 79643.

2. 30 CFR 778.11 Providing applicant and operator information.

[insert State counterpart or state that there is No State Counterpart]

- (a) You, the applicant, must provide in the permit application --
  - (1) A statement indicating whether you and your operator are corporations, partnerships, associations, sole proprietorships, or other business entities;
  - (2) Taxpayer identification numbers for you and your operator.
- (b) You must provide the name, address, and telephone number for --
  - (1) The applicant.
  - (2) Your resident agent who will accept service of process.
  - (3) Any operator, if different from the applicant.
  - (4) Each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator; for every such business entity, you must also provide the required information for every president, chief executive officer, and director (or other persons in similar positions), and every person who owns, of record, 10 percent or more of the entity.
- (c) For you and your operator, you must provide the information required by paragraph (d) of this section for every --
  - (1) Officer.
  - (2) Partner.
  - (3) Member.
  - (4) Director.
  - (5) Person performing a function similar to a director.
  - (6) Person who owns, of record, 10 percent or more of the applicant or operator.
- (d) You must provide the following information for each person listed in paragraph (c) of this section --
  - (1) The person's name, address, and telephone number.
  - (2) The person's position title and relationship to you, including percentage of ownership and location in the organizational structure.
  - (3) The date the person began functioning in that position.
- (e) We need not make a finding as provided for under § 774.11(g) of this subchapter before entering into AVS the information required to be disclosed under this section; however, the mere listing in AVS of a person identified in paragraph (b) or (c) of this section does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation. [2000 rule, 65 FR 79668 and 2007 rule, 72 FR 68031]

Note: In the 2000 rule, this section was created from previous § 778.13. It was re-titled for clarity and to specify that the information requirements for applications pertain to both applicants and the applicant's operators. It was amended to more closely mirror the requirements of section 507(b) of the Act. See 2000 rule preamble discussion at 65 FR 79643-79644.

\*Wording changed by Ann

\*\*This section was revised and redesignated in the 2007 O&C rule. Portions of the rule language from the 2000 rule were carried forward at (a) (2), (b) (1-3), and (d) (1-3). See 2000 O&C rule language at 65 FR 79688

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\*\*The original language from Stephanie...Ann's language change does not change the overall meaning.

The 2007 rule adopted several amendments to § 778.11.

- To more clearly reflect the intent of the 2000 rule, the requirement for an applicant or operator to identify any controller in an application was removed.
- Again, to more clearly reflect the intent of the 2000 rule, certain relationship information required in an application is no longer referred to as "ownership and control" information. The title of the section was revised in 2007 for the same reason.
- "Associations," "partner," and "member" were added to the classes of relationships other entities have with the applicant business entity.
- The requirement to identify person(s) responsible for OSM-1 submissions was removed.
- The applicant and operator are required to identify in an application each business entity in the applicant's and operator's organizational structure "up to and including the ultimate parent entity."
- \*Required disclosure of primary persons in the organizational structure above the Applicant and Operator but to a lesser level than the application disclosure requirements.
- \*Omitted by Ann

- Modified the information disclosure requirement to identify owners of 10 to 50 percent to the requirement to disclose all owners of 10 percent or more. We determined that the 2000 rule introduced confusion by citing a percentage not provided for in section 507(b) of the Act.
- We codified that OSM (or other regulatory authority) does not have to make a finding of ownership or control before entering into AVS information required from applicants under this section, § 774.12, or otherwise provided by an applicant or its operator. We also clarified that the disclosure of relationship information under § 778.11 and its subsequent listing in AVS does not create a presumption of ownership or control.

See the 2007 rule preamble discussion at 72 FR 68019.

### 3. 30 CFR 778.12 Providing permit history information.

[insert State counterpart or state that there is No State Counterpart]

(a) You, the applicant, must provide a list of all names under which you, your operator, your partners or principal shareholders, and your operator's partners or principal shareholders operate or previously operated a surface coal mining operation in the United States within the five-year period preceding the date of submission of the application.

(b) For you and your operator, you must provide a list of any pending permit applications for surface coal mining operations filed in the United States. The list must identify each application by its application number and jurisdiction, or by other identifying information when necessary.

(c) For any surface coal mining operations that you or your operator owned or controlled within the five-year period preceding the date of submission of the application, and for any surface coal mining operation you or your operator own or control on that date, you must provide the --

- (1) Permittee's and operator's name and address;
- (2) Permittee's and operator's taxpayer identification numbers;
- (3) Federal or State permit number and corresponding MSHA number;
- (4) Regulatory authority with jurisdiction over the permit; and
- (5) Permittee's and operator's relationship to the operation, including percentage of ownership and location in the organizational structure.

[2000 rule, 65 FR 79669]

Note: This section was newly added in the 2000 rule. It was constructed from provisions in previous § 778.13. In 2000, the requirement for an applicant to provide the permit history information for the operator was added and the required submission of the date of MSHA identification number issuance was removed. See the 2000 rule preamble discussion at 65 FR 79644.

4. 30 CFR 778.13 Providing property interest information.

[insert State counterpart or state that there is No State Counterpart]

You, the applicant, must provide in the permit application all of the following information for the property to be mined --

(a) The name and address of --

(1) Each legal or equitable owner(s) of record of the surface and mineral.

(2) The holder(s) of record of any leasehold interest.

(3) Any purchaser(s) of record under a real estate contract.

(b) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(c) A statement of all interests, options, or pending bids you hold or have made for lands contiguous to the proposed permit area. If you request in writing, we will hold as confidential, under § 773.6(d)(3)(ii) of this chapter, any information you are required to submit under this paragraph which is not on public file under State law.

(d) The Mine Safety and Health Administration (MSHA) numbers for all structures that require MSHA approval.

[2000 rule, 65 FR 79669]

Note: In the 2000 rule, this new section was created from provisions in previous § 778.13. It changed little from the previous provisions except for redesignations. One change was the removal of the provision that required an applicant to submit information in any format OSM prescribes. See the 2000 rule preamble discussion at 65 FR 79664.

5. 30 CFR 778.14 Providing violation information.

[insert State counterpart or state that there is No State Counterpart]

(a) You, the applicant, must state, in your permit application, whether you, your operator, or any subsidiary, affiliate, or entity which you or your operator own or control or which is under common control with you or your operator, has --

(1) Had a Federal or State permit for surface coal mining operations suspended or revoked during the five-year period preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond in connection with surface coal mining and reclamation operations during the five-year period preceding the date of submission of the application.

(b) For each suspension, revocation, or forfeiture identified under paragraph (a), you must provide a brief explanation of the facts involved, including the --

(1) Permit number.

(2) Date of suspension, revocation, or forfeiture, and, when applicable, the amount of bond or similar security forfeited.

(3) Regulatory authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action.

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- (4) Current status of the permit, bond, or similar security involved.
- (5) Date, location, type, and current status of any administrative or judicial proceedings concerning the suspension, revocation, or forfeiture.
- (c) A list of all violation notices you or your operator received for any surface coal mining and reclamation operation during the three-year period preceding the date of submission of the application. In addition you must submit a list of all unabated or uncorrected violation notices incurred in connection with any surface coal mining and reclamation operation that you or your operator own or control on that date. For each violation notice reported, you must include the following information, when applicable --
- (1) The permit number and associated MSHA number.
  - (2) The issue date, identification number, and current status of the violation notice.
  - (3) The name of the person to whom the violation notice was issued,
  - (4) The name of the regulatory authority or agency that issued the violation notice.
  - (5) A brief description of the violation alleged in the notice.
  - (6) The date, location, type, and current status of any administrative or judicial proceedings concerning the violation notice.
  - (7) If the abatement period for a violation in a notice of violation issued under § 843.12 of this chapter, or its State regulatory program equivalent, has not expired, certification that the violation is being abated or corrected to the satisfaction of the agency with jurisdiction over the violation.
  - (8) For all violations not covered by paragraph (c) (7) of this section, the actions taken to abate or correct the violation.
- [2000 rule, 65 FR 79669]

Note: In the 2000 rule, we re-titled the section and amended several requirements. We imposed a 5-year window for reporting bond forfeitures and added the requirement to expressly identify a violation number or other unique identifier for a violation. We removed the requirements to report permit issuance dates, MSHA number issuance dates, and abatement information. See the 2000 rule preamble discussion starting at 65 FR 79649.

L. 30 CFR 840.13 Enforcement authority

[insert State counterpart or state that there is No State Counterpart]

- (b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with §§ 843.11, 843.12, 843.13, and \*843.23 and subchapters G and J of this chapter.

[1994 Procedures rule, 59 FR 54356]

\*Note: The 1994 Procedures rule amended § 840.13 by adding a cross-reference to the list of Federal sections (843.11, 843.12, and 843.13) whose sanctions with which each State program's inspection and enforcement provisions must be consistent. See 59 FR 54356. However, while anticipated in the 1994 Procedures rule, a section 843.23 has not been adopted into the Federal rules. Therefore, it is unnecessary to include any reference to § 843.23 in § 840.13.

This is the clarification by Ann on 843.23. I agree

M. 30 CFR 843.11 Cessation Orders.

[insert State counterpart or state that there is No State Counterpart]

(a) (1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this chapter, any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this chapter which:

(i) Creates an imminent danger to the health or safety of the public; or  
(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations:

(i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(ii) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State in which the operations were conducted.

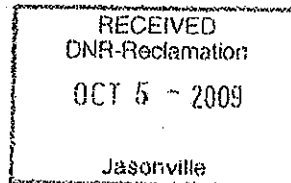
(3) If the cessation ordered under paragraph (a) (1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b) (1) When a notice of violation has been issued under § 843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph (b) shall require the permittee to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary, or until the order expires pursuant to section 521(a) (5) of the Act and § 843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.



(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) An authorized representative of the Secretary shall terminate a cessation order by written notice to the permittee when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under part 845 of this chapter.

(g) Within 60 days after issuing a cessation order, OSM will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or OSM as an owner or controller of the operation, as defined in § 701.5 of this chapter.

[2000 rule, 65 FR 79670]

Note: Prior to the 2000 rule, this section required notification of those identified as owners and controllers when a cessation order (CO) was written. The 2000 rule changes the notification requirement from only those identified as owners and controllers, to a general notification of those persons listed in the CO that a CO has been issued.

#### N. Federal role in Improvidently Issued State Permits & Oversight of Permit Decisions

##### 1. 30 CFR 843.21 Procedures for improvidently issued State permits.

[insert State counterpart or state that there is No State Counterpart]

[2000 rule, 65 FR 79670]

Note: The 2000 rule amended this section to include inspection provisions analogous to the statutory provision at section 521(a)(3) of the Act and to add a provision for a written finding by OSM of an improvidently issued permit. See 65 FR 79670-79671.

In the 2007, rule, this section was removed in its entirety. After reviewing our historic use of § 843.21, we concluded it no longer added significant value to the Federal enforcement program. See the 2007 rule preamble discussion at 72 FR 68024.

##### 2. 30 CFR 843.24 Oversight of State permitting decisions with respect to ownership or control or the status of violations.

[insert State counterpart or state that there is No State Counterpart]

[1994 Procedures rule, 59 FR 54356]

Note: This section was removed in its entirety in the 2000 rule. The section was conceptually connected to other provisions in the 1994 Procedures rule that also have been removed or amended. See the 2000 rule preamble discussion at 65 FR 79654.

#### O. Part 847 Alternative Enforcement

[insert State counterpart or state that there is No State Counterpart]

We created new Part 847 in the 2000 rule to provide for enforcement actions not previously addressed in our Federal regulations. New Part 847 implements sections 518(e), 518(g), and 521(c) of the Act.

Please refer to the Rule Changes Side-by-Side Template to see the complete Table of Contents and provisions for Part 847.

**P. Alternative Enforcement**

**1. 30 CFR 847.2 General provisions.**

[insert State counterpart or state that there is No State Counterpart]

- (a) Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, we must update AVS to reflect the judgment or conviction.
  - (b) The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.
  - (c) Each State regulatory program must include provisions for civil actions and criminal penalties that are no less stringent than those in this part and include the same or similar procedural requirements.
  - (d) Nothing in this part eliminates or limits any additional enforcement rights or procedures available under Federal or State law.
- [2000 rule, 65 FR 79671]

Note: We created new Part 847 in the 2000 rule to provide for enforcement actions not previously addressed in the Federal rules. Section 847.2 includes general provisions that—

- address the practice of not pursuing alternative enforcement after bond forfeiture,
- judgments and convictions under Part 847 will be shown in AVS,
- require State programs to provide for civil actions and criminal penalties that are no less stringent than in Part 847, and
- nothing in Part 847 eliminates or limits any additional enforcement actions a regulatory authority may take.

\* Ann's version

- \*\* -An AVS update when an alternative enforcement action results in a judgment or conviction,
- Alternative enforcement cannot be based solely on bond status
- State regulations must have no less stringent provision for civil actions and criminal penalties

\*\* Stephanie's version

See the 2000 rule preamble discussion at 65 FR 79655.

**2. 30 CFR 847.11 Criminal penalties.**

[insert State counterpart or state that there is No State Counterpart]

Under sections 518(e) and (g) of the Act, we, the regulatory authority, may request the Attorney General to pursue criminal penalties against any person who--

- (a) Willfully and knowingly violates a condition of the permit;

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- (b) Willfully and knowingly fails or refuses to comply with --  
    (1) Any order issued under section 521 or 526 of the Act; or  
    (2) Any order incorporated into a final decision issued by the Secretary under the Act (except for those orders specifically excluded under section 518(e) of the Act); or  
(c) Knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the regulatory program or any order or decision issued by the Secretary under the Act.  
[2000 rule, 65 FR 79671 and 2007 rule, 72 FR 68031]

Note: This was adopted in new Part 847 and was created to implement the criminal sanctions under sections 518(e) and 518(g) of the Act. See the 2000 rule preamble discussion at 65 FR 79655.

In the 2007 rule, the opening paragraph of the section was amended to clarify that pursuit of alternative enforcement under § 847.11 is always at the discretion of the regulatory authority. See the 2007 rule preamble discussion at 72 FR 68026.

\*Ann's wording is different than the original Stephanie drew up, but the meaning and interpretation remain the same

3. 30 CFR 847.16 Civil actions for relief.

[insert State counterpart or state that there is No State Counterpart]

(a) Under section 521(c) of the Act, we, the regulatory authority, may request the Attorney General to institute a civil action for relief whenever you, the permittee, or your agent --

- (1) Violate or fail or refuse to comply with any order or decision that we issue under the Act or regulatory program;
- (2) Interfere with, hinder, or delay us in carrying out the provisions of the Act or its implementing regulations;
- (3) Refuse to admit our authorized representatives onto the site of a surface coal mining and reclamation operation;
- (4) Refuse to allow our authorized representatives to inspect a surface coal mining and reclamation operation;
- (5) Refuse to furnish any information or report that we request under the Act or regulatory program; or
- (6) Refuse to allow access to, or copying of, those records that we determine necessary to carry out the provisions of the Act and its implementing regulations.

(b) A civil action for relief includes a permanent or temporary injunction, restraining order, or any other appropriate order by a district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which you have your principal office.

(c) Temporary restraining orders will be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended.

(d) Any relief the court grants to enforce an order under paragraph (b) of this section will continue in effect until completion or final termination of all proceedings for review of that order under the Act or its implementing regulations unless, beforehand, the district court granting the relief sets aside or modifies the order.

[2000 rule, 65 FR 79671 and 2007 rule, 72 FR 68031]

Note: Section 847.16 was adopted in new Part 847 and was created to implement the civil actions provisions under section 521(c) of the Act. See the 2000 rule preamble discussion at 65 FR 79655.

In the 2007 rule, paragraph (a) of the section was amended to clarify that pursuit of alternative enforcement under § 847.16 is always at the discretion of the regulatory authority. See the 2007 rule preamble discussion at 72 FR 68026. \*

\*Ann's wording is different than the original Stephanie drew up, but the meaning and interpretation remain the same

**Q. Abandoned Mine Land Contractor Eligibility**

**30 CFR 874.16 Contractor eligibility.**

[insert State counterpart or state that there is No State Counterpart]

To receive AML funds, every successful bidder for an AML contract must be eligible under §§ 773.12, 773.13, and 773.14 of this chapter at the time of contract award to receive a permit or provisionally issued permit to conduct surface coal mining operations.

[AML Reclamation Fund Reauthorization Implementation rule, 59 FR 28172; 2000 rule, 65 FR 79671]

Note: The 2000 rule amended the section heading and updated cross-references in both §§ 874.16 and 875.20 based upon the amended eligibility provisions adopted in the rulemaking.

